(19,350.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 255.

THE CALIFORNIA REDUCTION COMPANY ET AL., PETITIONERS,

vs.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals for the Ninth Circuit.

CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee. } No. 901.

Upon Appeal from the United States Circuit Court for the Northern District of California.

1 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

SANITARY REDUCTION WORKS (a Corporation), Appellee,
vs.
THE CALIFORNIA REDUCTION COMPANY (a Corporation) ET AL., Appellants.

Order Extending Time to File Record and Docket Cause.

Upon reading and filing the stipulation entered into between the respective parties in the above-entitled action, extending the time within which to docket the said cause and within which to file the record on appeal with the clerk of this court, and good cause appearing therefor it is now therefore ordered that the time within which the said record on appeal may be filed with the clerk of the said court, be and the same is hereby extended to and including the first day of October, 1902.

It is further ordered that the time within which to docket the said cause be and the same is hereby extended to and including the said first day of October, 1902.

WM. W. MORROW, Judge.

(Endorsed:) No. 901. In the circuit court of appeals of the
2 United States, ninth circuit, northern district of California. Sanitary Reduction Works, a corporation, appellee, *vs.* The California Reduction Company, a corporation, *et al.*, appellants. Order extending time to file record and docket cause. Filed July 28, 1902. F. D. Monckton, clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Appellants.

Stipulation as to Printing of Record.

It is hereby stipulated by the parties hereto that there be omitted from the copy of the original certified record on file in this action which is required to be printed by the rules of the above-entitled court, the following parts of said record, to wit:

The testimony of witness Robt. B. Mitchell, as the same appears on pages 491 to 513, inclusive;

The testimony of witness George D. Squires, as the same appears on pages 514 to 517, inclusive;

The testimony of witness A. M. Skelly, as the same appears on pages 518 to 523, inclusive;

The testimony of witness Geo. D. Squires (resumed), as the same appears on pages 524 to 525, inclusive;

3 The testimony of witness R. B. Mitchell (resumed), as the same appears on pages 544 to 547, inclusive;

The testimony of witness H. Wadsworth, as the same appears on pages 549 to 555, inclusive;

The testimony of witness Leopold V. Merle, as the same appears on pages 556 to 557, inclusive;

The testimony of witness Frank B. Sharon, as the same appears on pages 558 to 562, inclusive;

The testimony of witness H. Wadsworth, as the same appears on pages 563 to 566, inclusive;

The testimony of witness R. B. Mitchell (resumed) as the same appears on pages 567 to 569, inclusive;

The testimony of witness Irving F. Moulton, as the same appears on pages 570 to 571, inclusive;

The testimony of witness E. J. Wales, as the same appears on pages 572 to 573, inclusive;

The testimony of witness Lewis Cowgill, as the same appears on page 574;

The testimony of witness Robert S. Lamotte, as the same appears on page 575;

And it is further stipulated that the said record, when so printed with the parts omitted as hereinabove set out in detail, shall be deemed to be and constitute the record required to be printed under said rules.

And it is further stipulated that if the plaintiffs in error and appellants are hereafter minded so to do, they may print as a part of the record the foregoing omitted portions thereof, or any part of the same; and if the defendant in error and appellee desires to have

said omitted portion or any portion thereof printed to consti-
4 tute a part of the record herein, the plaintiffs in error and appellants will, upon notice to that effect served upon them and filed with the clerk of this court, print such portions as may be specified by said defendant in error and appellee, so that the same may be considered on appeal herein and constitute a part of the record.

Dated, December 18, 1902.

PAGE, McCUTCHEN, HARDING & KNIGHT,
GARRET W. McENERNEY,
BLACK & LEAMING,
Attorneys for Plaintiff in Error and Appellants.
WM. M. PIERSON,
Attorney for Defendant in Error and Appellee.

(Endorsed:) No. 901. United States circuit court of appeals for the ninth circuit. Sanitary Reduction Works of San Francisco, appellee, vs. California Reduction Company, *et al.*, appellants. Stipulation that parts of original record be omitted from copy to be printed. Filed Jan. 14, 1903. Frank D. Monckton, clerk. By Meredith Sawyer, deputy clerk.

Bill of Complaint.

To the honorable judges of the circuit court of the United States for the ninth circuit in and for the northern district of California, sitting in chancery:

Sanitary Reduction Works of San Francisco, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, complainant, brings this its bill of complaint against The California Reduction Company, a corpo-
5 ration duly incorporated, organized and existing under and by virtue of the laws of the State of Colorado, and S. Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcona, D. Cemsangla, G. Cereghino, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Cosstante, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dondero, E. Erigero, D. Esposto, M. Fidmo, A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, C. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Morini, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Noce, J. Paganini, G. Paganini, B. Pasqualetti, F. Picollo C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Serivani,

R. Stefano, A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, First Italian, Second Italian, Third Italian, Fourth Italian, Fifth Italian, Sixth Italian, Seventh Italian, Eighth Italian, Ninth Italian Tenth Italian, Eleventh Italian, Twelfth Italian, Thirteenth Italian, Fourteenth Italian, Fifteenth Italian, Sixteenth Italian, Seventeenth Italian, Eighteenth Italian, Nineteenth Italian, Twentieth Italian, Twenty-first Italian, Twenty-second Italian, Twenty-third Italian,
6 Twenty-fourth Italian, Twenty-fifth Italian, Twenty-sixth Italian Twenty-seventh Italian, Twenty-eighth Italian, Twenty-ninth Italian, Thirtieth Italian, Thirty-first Italian, Thirty-second Italian, Thirty-third Italian, Thirty-fourth Italian, Thirty-fifth Italian, Thirty-sixth Italian, Thirty-seventh Italian, Thirty-eighth Italian, Thirty-ninth Italian, Fortieth Italian, Forty-first Italian, Forty-second Italian, Forty-third Italian, Forty-fourth Italian, Forty-fifth Italian, Forty-sixth Italian, Forty-seventh Italian, Forty-eighth Italian, Forty-ninth Italian, and Fiftieth Italian, citizens of the Kingdom of Italy and subjects of the King of Italy, as respondents, and thereupon your orator complains and says:

1. That your orator is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, having its office and principal place of business in the city and county of San Francisco, in said State of California, and is a citizen of California and engaged in carrying on business in said city and county of San Francisco, State of California, and in the northern district of said State of California.

2. That the respondent, The California Reduction Company, is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Colorado, and is a citizen of said State of Colorado now within, and is now engaged in carrying on certain business hereinafter alleged, in the city and county of San Francisco, State of California, and in the northern district of said State of California. That the respondents, S. Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C.
7 Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarliar, A. Caporance, C. A. Carlson; C. B. Carcona; D. Cemsangla, G. Cereghino, V. Chiossi, L. Chivighino, F. Compe. L. Consigla, P. Costante, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. de Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo, A. Figoni. L. Firpo, M. Foppiano, D. Freusse, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, C. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Moroni, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Nonce, J. Paganini, G. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semoza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, First Italian, Second Italian, Third Italian, Fourth Italian, Fifth Italian, Sixth Italian, Seventh

Italian, Eighth Italian, Ninth Italian, Tenth Italian, Eleventh Italian, Twelfth Italian, Thirteenth Italian, Fourteenth Italian, Fifteenth Italian, Sixteenth Italian, Seventeenth Italian, Eighteenth Italian, Nineteenth Italian, Twentieth Italian, Twenty-first Italian, Twenty-second Italian, Twenty-third Italian, Twenty-fourth Italian, Twenty-fifth Italian, Twenty-sixth Italian, Twenty-seventh Italian, Twenty-eighth Italian, Twenty-ninth Italian, Thirtieth Italian, Thirty-first Italian, Thirty-second Italian, Thirty-third Italian, Thirty-fourth Italian, Thirty-fifth Italian, Thirty-sixth Italian, Thirty-seventh Italian, Thirty-eighth Italian, Thirty-ninth
8 Italian, Fortieth Italian, Forty-first Italian, Forty-second Italian, Forty-third Italian, Forty-fourth Italian, Forty-fifth Italian, Forty-sixth Italian, Forty-seventh Italian, Forty-eighth Italian, Forty-ninth Italian, and Fiftieth Italian, are each and all of them citizens of the Kingdom of Italy and subjects of the King of Italy and aliens to the United States of America, and all of them are, and each of them is an inhabitant of and resident in the city and county of San Francisco aforesaid, in the northern district of California, in said ninth circuit.

3. That the names, First Italian, Second Italian, Third Italian, Fourth Italian, Fifth Italian, Sixth Italian, Seventh Italian, Eighth Italian, Ninth Italian, Tenth Italian, Eleventh Italian, Twelfth Italian, Thirteenth Italian, Fourteenth Italian, Fifteenth Italian, Sixteenth Italian, Seventeenth Italian, Eighteenth Italian, Nineteenth Italian, Twentieth Italian, Twenty-first Italian, Twenty-second Italian, Twenty-third Italian, Twenty-fourth Italian, Twenty-fifth Italian, Twenty-sixth Italian, Twenty-seventh Italian, Twenty-eighth Italian, Twenty-ninth Italian, Thirtieth Italian, Thirty-first Italian, Thirty-second Italian, Thirty-third Italian, Thirty-fourth Italian, Thirty-fifth Italian, Thirty-sixth Italian, Thirty-seventh Italian, Thirty-eighth Italian, Thirty-ninth Italian, Fortieth Italian, Forty-first Italian, Forty-second Italian, Forty-third Italian, Forty-fourth Italian, Forty-fifth Italian, Forty-sixth Italian, Forty-seventh Italian, Forty-eighth Italian, Forty-ninth Italian, and Fiftieth Italian, hereinabove appearing are fictitious, and the true
9 names of the respondents designated thereby are at present unknown to your orator, and your orator prays that when said true names are discovered, this bill of complaint may be amended by inserting the same in the place and stead of said fictitious names.

4. And your orator further shows unto your honors that heretofore, to-wit, on the 17th day of February, 1896, the board of supervisors of the city and county of San Francisco, State of California, duly and finally passed, adopted and enacted a certain order known as "Order No. 2965," which said order was and is in the words and figures as follows, to wit:

Order No. 2965. Granting to F. E. Sharon, his associates and assigns, the sole right and privilege to cremate garbage, house refuge, dead animals and putrid vegetable matter and material of a like

character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same, or portions thereof, into fertilizing matter and other substances, free of all cost or charge to said city and county, and making certain violations of this order misdemeanors.

Whereas, the disposal of house refuse, butcher's offal, garbage, putrid or stinking animal or vegetable matter, refuse, ashes or other like matter, by cremation, or by some process of chemical reduction, is the only effective means to dispose of the same to prevent the said matter and material from being deposited in or upon lots, lands and public streets situate in the city and county or in the waters of the bay, as heretofore, to the prejudice of the public health; and

10 Whereas, under the provisions of an act of the legislature entitled "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises" (approved March 23, 1893), bids for a franchise were duly called for; and

Whereas, F. E. Sharon was the highest and best bidder for the said franchise, as hereinafter recited, and all the forms and requirements of law necessary thereto being complied with; now therefore,

The people of the city and county of San Francisco do ordain as follows:

In consideration of the sum of twenty-five hundred and ten dollars, the receipt of which is hereby acknowledged, and in consideration of the further payment of two per centum for the term of fifteen years from and after the date of this franchise, and the payment of five per centum for the remaining term of thirty-five years, on the gross amount of the receipts to be derived by the said F. E. Sharon, his associates or assigns, under this franchise, to be paid into the treasury of the city and county of San Francisco each and every year during the continuance of this franchise, the franchise hereinafter recited is hereby granted to F. E. Sharon, his associates and assigns.

SECTION 1. The sole and exclusive right and privilege is hereby conferred upon and granted to F. E. Sharon, his associates, and assigns, for a term of fifty years from and after the approval of this order, to cremate and destroy within the city and county aforesaid, by crematories or by a process of reduction, house refuse, dirt, ashes, cinders, sludge, crockery; tins; bones and other like

11 matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted), and putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and the said grantees, their associates and assigns, shall have the right and privilege to charge and collect therefor not exceeding the sum of twenty cents per load, such load not to exceed a cubic yard, on the delivery of the above material or substances at the plant or works where the crematory or reduction plant is established.

SECTION 2. The grantees, their associates and assigns, shall, within a period of twenty-four (24) months after the granting of this franchise, unless the time is extended therefor by this board, have fully erected and constructed and in operation a suitable building or buildings, and equip, fit up and install the same with the necessary crematories, machinery, tools and appliances required to cremate and destroy by cremation, or by a process of reduction, all obnoxious germs and elements contained in house refuse, butcher's offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, and any dead animal and putrid vegetable matter, and fish, flesh and food condemned by the board of health as unfit for human food, the works to be constructed to cremate or reduce at least three hundred tons per day of the materials specified in this section, and the capacity to be increased as required from time to time.

SECTION 3. From and after the erection and construction of the buildings referred to in section 2 of this order, it shall be un-
12 lawful for any person or corporation to remove through the public streets from any houses, hotels, markets, hospitals, factories, restaurants, stores or any other like building or place in this city and county, any refuse, butchers' offal, garbage, dirt, ashes, cinders, sludge, crockery, tins, bones or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food condemned by the board of health as unfit for human food, or dead animals whose removal is not otherwise provided for by contract or franchise heretofore granted, unless the same shall be removed through said public streets in closed vehicles and wagons constructed so as to conceal the contents from public view, and to effectually prevent any smell escaping therefrom, as well as to prevent the dropping of any portion of such material or substances on or upon the public streets, and which said vehicles and wagons shall be constructed in accordance with specifications approved by the board of health of said city and county.

SECTION 4. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to dump or place upon any land within said city and county, or in any water or waterways within said city and county, any refuse, butchers' offal, garbage or other material mentioned in section 3 of this order, but such refuse, butchers' offal, garbage and other material shall be forthwith delivered to the crematory herein provided for, and there, at the expense of the person or corporation so conveying the same, be cre-
13 mated or destroyed, or subjected to such disposition and treatment as will at once secure and effect a complete combustion of all gases and odors arising therefrom.

SECTION 5. The said grantees, their associates and assigns, on receipt of any of the material or substances specified in this order, shall within twenty-four (24) hours thereafter cremate or reduce the same, or shall subject the same to such process as will secure the

complete combustion of all gases or odors arising therefrom. The said grantees, their associates and assigns, shall maintain and operate their plant and crematory or crematories, or other apparatus and the matter and substances received, so as to prevent any obnoxious smells or gases being emitted either from the deposits of such matter or substances on their premises, or from the process of cremation or other treatment thereof, or from the residuum remaining after cremation or treatment as aforesaid; also, that in the operation of said works no smoke or soot shall be emitted so as to constitute a nuisance.

SECTION 6. The said grantees, their associates and assigns, shall from and after the first day of December, 1902, have the sole and exclusive right and privilege during the continuance of the remainder of the term of this franchise to remove and dispose of the carcasses of all dogs killed at the public pound, and all animals impounded and not redeemed by the owners thereof, and which are valueless and cannot be sold; also, to remove and dispose of the carcasses of all dead animals found upon the public streets, and the carcasses of all dead animals in said city and county not slain
14 for human food, which shall not be removed and disposed of by the owners thereof so as not to become a nuisance within six hours after the death of the same; provided that in the event of the parties now holding and exercising this privilege of removing the dead animals not slain for human food should hereafter fail or refuse to remove the dead animals and should forfeit their contract with said city and county then immediately upon such forfeiture, the right to remove said dead animals shall vest in the grantees herein, their associates and assigns under this order.

SECTION 7. This board will pass such orders as may be required from time to time to enable the said grantees, their associates and assigns, to enjoy and have the benefit of all the rights and privileges herein granted, and on the completion of the work will pass such other and additional orders as will enable the said grantees, their associates and assigns, to carry out the contemplated destruction of garbage, offal, house refuse and material mentioned in this order, and the conversion of the substances herein named for fertilizing and other purposes, and for the segregation prior to delivery of garbage and offal from ashes and other refuse.

SECTION 8. The said grantees, their associates and assigns, shall at all times be subject to and conform to all health and sanitary regulations and requirements enacted and in force during the existence of this franchise. The said grantees, their associates and assigns, shall receive no compensation whatever from the city and county for any service performed under the conditions of this order
15 in disposing of the material and substances specified in this order.

SECTION 9. This franchise shall cease and determine upon the failure of the grantees, their associates and assigns, to fully carry out and faithfully perform the obligations herein imposed, unless

from unavoidable cause beyond the control or power of the grantees, their associates and assigns, by reason of any fire or other casualty, the operations and works shall be destroyed or temporarily suspended in their operation. The said grantees, their associates and assigns, in the event of an accident to or destruction of their works, shall, during the time such works cannot be operated, and until said works are repaired or reconstructed, and within such reasonable time as may be allowed and approved by this board, shall deodorize the material and substances specified in this order and dispose of the same as directed by this board, so as to prevent all noxious gases or odors escaping therefrom, until the said material or substances are cremated or utilized as provided by this order.

SECTION 10. All of the machinery and appliances used shall be of California manufacture, except such as are manufactured exclusively or patented in the Eastern States or abroad.

SECTION 11. The said grantees, their associates and assigns, shall, within a period of ten days from the date of the approval of this order, file with clerk of this board their acceptance of its provisions and of this franchise.

16 SECTION 12. Any violation of the provisions of sections 3 and 4 of this order shall be and are hereby declared to be a misdemeanor, and punishable as such.

SECTION 13. This order shall take effect and be in force on and from its passage.

All orders or parts of orders in conflict with the provisions of this order are hereby repealed and made null and void.

And the clerk is hereby directed to advertise this order as required by law.

In Board of Supervisors, San Francisco, February 17, 1896.

Adopted by the following vote:

Ayes—Supervisors King, Scully, Hirsch, Dimond, Taylor, Morganstern, Spreckels, Hobbs.

Noes—Supervisors Benjamin, Hughes, Dunker, Wagner.

JNO. A. RUSSELL, Clerk.

That by virtue of the premises and under and pursuant to the provisions of "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises," approved March 23, 1893, said order did on, to wit, the said 17th day of February, 1896, become a law of said city and county.

5. That thereafter, to wit, on the 1st day of November, A. D. 1897, said board of supervisors, to more effectually carry out the above mentioned order No. 2965, duly passed, adopted and enacted a certain order or ordinance known as "Order No. 12 (second se-

17 ries)," which said order was and is in the words and figures following, to wit:

Order No. 12 (second series), prohibiting the dumping of dirt, garbage, butchers' offal, or putrid matter, etc., upon any lands in the city and county of San Francisco, or on the waterfront, or from any wharf or bulkhead in said city and county, and providing for the cremation and destruction of the same, and the duties of officers in relation thereto.

Whereas, from time to time during the last twenty years, the dumping of garbage, dirt, offal, house refuse, stinking animal or vegetable matter, ashes, cinders, sludge, acids or like matter, to fill in lots and property and particularly in filling in water lots, became so objectionable and deleterious to the public health that various plans have been adopted to mitigate such nuisance; and

Whereas, while steps have been heretofore taken to abate such nuisance by covering the same over with sand it has become apparent that the lots so filled in have thrown off noxious gases deleterious to the public health, and in case of the prevalence of any epidemic disease would become a fruitful source of danger to the sanitary well being of our citizens; and

Whereas, the board of health from time to time has called attention to and condemned the disposition of such garbage and refuse matter in the filling of lots and have repeatedly urged the cremation of such substances to protect the public health; and

18 Whereas, in order to provide satisfactory means by which all such deleterious matter should be disposed of an exclusive franchise was, by order No. 2965 of this board passed February 17, 1896, sold by this city and county authorizing the cremation and destruction of such substances; and

Whereas, The Sanitary Reduction Works, the assignee and successor in interest of the grantee of such franchise, has notified the board of the completion of their works and of their readiness to receive, cremate and destroy all of such substances in accordance with the terms and under the conditions of said franchise; now therefore,

The people of the city and county of San Francisco do ordain as follows:

SECTION 1. No person, company or corporation shall on and after the 8th day of November, 1897, deposit, dump or cause to be dumped or deposited upon any street, lot or lands, within said city and county or in any water or waterways within said city and county, or from any wharf or bulkhead on the waterfront of said city and county, except as hereinafter provided, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, broken glass, crockery, tins, bones, rubbish or other like matter, or any dead animals (not otherwise provided for by contract or franchise heretofore granted by the city and county), or putrid or stinking animal or vegetable matter or fish, flesh and food condemned by the board of health, as unfit for human food.

All such refuse, butchers' offal, garbage, ashes, cinders,
19 sludge, acids or other like substances or matter hereinbefore enumerated shall be delivered at and to the crematory of the Sanitary Reduction Works on the block bounded by Rhode Island, Alameda, De Haro and Fifteenth streets, in said city and county, and there at the expense of the person, company or corporation so conveying the same, be cremated and destroyed or subjected to such disposition and treatment as will secure and effect a complete combustion of all gases and odors arising therefrom as provided in the franchise aforesaid.

(Penalty—Duty of Chief of Police.)

SECTION 2. Any person, company or corporation violating the provisions of this order shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding two hundred and fifty ($250) dollars, or by imprisonment for a term not exceeding one hundred days, or by both such fine and imprisonment; and it shall be the duty of the chief of police to take such steps and issue such orders to the members of the force under his control as shall insure the arrest and punishment of any and all persons violating the provisions of this order.

(Board of Health to Aid in Enforcement of Order.)

SECTION 3. It shall be and is hereby made the duty of the board of health to aid by all means in its power the enforcement of the provisions of this order.

SECTION 4. Order No. 2300 and all orders or parts of orders conflicting with the provisions of this order are hereby repealed.

20 In Board of Supervisors, San Francisco, November 1, 1897.

After having been published five successive days, according to law, taken up and passed by the following vote:

Ayes—Supervisors Haskins, Delany, Sheehan, Dodge, Lachmann, Rottanzi, Morton, Smith, Rivers.

Absent—Supervisors Devany, Britt, Clinton.

JNO. A. RUSSELL, Clerk.

Approved, San Francisco, November 4, 1897.

JAS. D. PHELAN,

Mayor and *Ex-officio* President of the Board of Supervisors.

That thereafter said last named order was published with the ayes and noes in a daily newspaper of said city and county, to wit, the newspaper then doing the official printing of said board of supervisors, for at least five successive days before final action thereon by

said board; and thereafter said order or ordinance was taken up and considered by said board in open meeting and finally passed, adopted and enacted; that thereafter and within ten days after such final action by said board, said order or ordinance was presented to the president of said board, to wit, the mayor of said city and county, and was within said ten days, which was, to wit, the 4th day of November, A. D. 1897, by him approved and signed.

That by virtue of the premises and under and pursuant to
21 the provisions of section 68 of an act of the legislature of the State of California, commonly known as and styled the "consolidation act," said order or ordinance did on, to wit, the said 4th day of November, 1897, become a law of said city and county.

6. That thereafter, to wit, on the 28th day of March, A. D. 1898, said board of supervisors duly passed, adopted and enacted a certain other resolution known as "Resolution No. 903 (fourth series)" in the words and figures following, to wit:

Resolution No. 903 (fourth series).—Relative to the public health, in the collection and removal of garbage, house refuse and other deleterious substances.

Whereas, after many years' attempts, house refuse, garbage and other deleterious material are now incinderated and destroyed; and

Whereas, the use of these substances etc., in fil-ing in submerged lots and lands in various portions of the city, particularly in the filling in of lots and streets south of Market street, was detrimental to the public health, and in the future may be the means when this property so filled in or improved of propagating disease; and

Whereas, the board of health have been persistent in presenting the dangers to this community of this disposition of garbage and other deleterious substances, and mainly through their efforts has this sanitary mode of incinerating and destroying said substances and material been successfully carried out; and

Whereas, it appears that notwithstanding the provisions of the general orders relative thereto, that some persons unknown,
22 continue when opportunity occurs to dump these substances on lots and lands, and while a few are detected, arrested and punished, others escape detection; and

Whereas, it is proper that some regulation be adopted whereby all vehicles removing these substances shall be specially licensed as scavenger wagons, in order that supervision may be had to enforce an observance of sanitary laws and ordinances; and

Whereas, complaints are made from time to time, that the carts and vehicles now used for the purpose of transporting garbage, house refuse, etc., through the public streets leak, and that unhealthy odors are emitted therefrom, and in order to prevent such nuisances the carts and vehicles should be constructed in conformity with directions and requirements of the board of health; and

Whereas, the collection, disposal and destruction of said substances in other cities is a municipal function performed for and at the ex-

pense of the municipality and as a sanitary precaution to protect and insure the public health is a necessity; therefore

Resolved, That the board of health be and their attention is respectfully called to the carts and vehicles now used for the transportation through the streets of garbage, house refuse and other like substances, with the request that said board designate the character and construction of and issue permits for the carts and vehicles to be so used as may in their judgment be required, to prevent the transportation of these substances being prejudicial to the public health or comfort.

23 Resolved, That if all sanitary requirements cannot be enforced under this proposed system in the removal, transportation or disposition of said material and substances it is the intention of this board to make suitable regulations for the collection and conveyance of said substances through the public streets, and to that end will provide a sufficient sum in the next tax levy to cover the expense and relieve the property owners from this burden, as in the judgment of this board the collection and removal of said substances is purely a municipal duty.

And the clerk is hereby directed to advertise this resolution as required by law.

In board of supervisors, San Francisco, March 28, 1898.

Adopted by the following vote:

Ayes: Supervisors Haskins, Delany, Sheehan, Dodge, Lackman, Morton, Britt, Smith, Rivers.

Absent: Supervisors Devany, Rottanzi, Clinton.

JNO. A. RUSSELL, Clerk.

7. That none of said resolutions, orders, ordinances, have ever been repealed, modified, impaired or revoked, but all of them are and ever since their passage have been in full force and effect.

8. That on the 18th day of February, 1896, the said F. E. Sharon, mentioned in said order No. 2965, accepted the terms of the said last named order and duly filed with the clerk of said board of supervisors his acceptance of the provisions of said last named

24 order and of the franchise thereby granted; and thereupon said F. E. Sharon and his associates entered into and upon, and faithfully performed and carried out, all and singular, the covenants, duties and conditions imposed upon him by and in connection with said resolutions, orders and ordinances until the assignment to your orator hereinafter stated.

9. That by virtue of the premises a good, valid and substantial contract was made and entered into by and between the said city and county of San Francisco, as party of the first part and the said F. E. Sharon and his associates and assigns, whereby the said F. E. Sharon, his associates and assigns, became entitled to have and enjoy the sole and exclusive privileges, rights and franchises specified and enumerated in said resolutions, orders and ordinances, for

the period of fifty years from and after the said 17th day of February, A. D. 1896.

10. That on the 18th day of September, A. D. 1896, the said F. E. Sharon his associates and assignees, duly made, executed and delivered to your orator a due and regular assignment in writing of the said contract and franchise so granted to him, his associates and assigns, by said order 2965, and your orater has since the date last aforesaid thereby become and still is the lawful owner and holder of said contract and franchise and vested by law with all the rights, privileges, franchises and immunities granted to said F. E. Sharon and his associates by and under the terms of said order last aforesaid.

25 11. That within the period of twenty-four months after the passage of said order No. 2965, granting the said franchise, and to wit, on the 10th day of October, 1897, your orator had fully erected and constructed and put in operation a suitable building and buildings, and had equipped, fitted up and installed the same with the necessary crematories, machinery and appliances required to cremate and destroy by cremation and by a process of reduction all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery tins, cinders, bones and other like matter, and all dead animals and putrid vegetable matter and fish, flesh and food condemned by the board of health of the city and county of San Francisco as unfit for human food, and said works were, as aforesaid, so constructed as to cremate or reduce more than five hundred tons per day of the materials hereinbefore specified, and your orator has the means to increase the capacity of the same as required from time to time. That in and about the erection and construction of said crematories, machinery, tools and appliances, and in the purchase of the United States patents governing the processes for conducting the said crematories, your orator has expended in actual cash more than the sum of $200,000, and thereupon and upon the completion of said buildings, crematories, machinery, tools and appliances, your orator notified the said board of supervisors of said city and county of San

26 Francisco that it had completed its said works and was ready to receive, cremate and destroy all of the substances mentioned in the said order No. 2965. That said contract and franchise so entered into, as aforesaid, is of great value, to wit, more than $20,000.00, but unless your orator, the party entitled thereto, can have the exclusive right and privilege of incinerating and cremating all the materials mentioned and provided for in said order, said contract and franchise will be rendered worthless and of no value and the money so expended by your orator, as aforesaid, and the machinery and property aforesaid, will be wholly lost and be made worthless.

12. That your orator since the said 10th day of October, 1897, has, on receipt of all of the materials and substances specified in said order No. 2965 which have been delivered to it, and within twenty-

four hours after the receipt thereof, cremated and reduced the same and subjected said materials and all gases and odors arising therefrom to complete combustion. That your orator has during all of said time maintained and operated its said plant and crematories and other apparatus, and the materials and substances so received by it, so as to prevent any obnoxious smells or gases being emitted from the deposits of such material or substances on its premises, or from the process of cremation and other treatment thereof, and from the residuum arising after cremation and treatment as aforesaid; and that in the operation of its said works no smoke or soot has been emitted so as to constitute a nuisance.

13. That since the passage of said order No. 12 (second series) your orator has paid to said city and county of San Fran-
27 cisco, State of California, the sum of two per centum per annum on the gross amount of the receipts derived by either the said F. E. Sharon and his associates or your orator under the franchise and contract contained in said order, as will more fully and at large appear by reference to resolution No. 729, fourth series, of the board of supervisors of said city and county of San Francisco duly passed and adopted by the said board on the 21st day of February, 1898, which said resolution is in the words and figures following:

Resolution No. 729 (fourth series).—Whereas, after an examination by the expert of the committee on finance and auditing of this board, of the books and accounts of the Sanitary Reduction Works of San Francisco, he reports that the total receipts of said reduction works for the burning of garbage, from November 1, 1897, to December 31, 1897, was $7010.45, and that the sum of $140.21, transmitted by said reduction works to this board and paid into the city and county treasury, is two per cent. of the gross receipts for the said period: therefore,

Resolved, That the communication, with statement, filed January 6, 1898, by said reduction works, in accordance with the terms of its franchise, be and the same is hereby accepted and approved by this board.

And the clerk is hereby directed to advertise this resolution as required by law.

In Board of Supervisors, San Francisco, February 21, 1898.

Adopted by the following vote:

28 Ayes—Supervisors Devany, Haskins, Delany, Sheehan, Dodge, Lackmann, Rottanzi, Morton, Britt, Smith, Clinton, Rivers.

JNO. A. RUSSELL, Clerk.

And your orator has also faithfully performed and carried out all and singular the covenants, duties and conditions imposed upon it by and in connection with said resolutions, orders and ordinances.

14. That since the completion by your orator of the buildings, crematory and machinery hereinbefore alleged the said respondents and each of them, (all of them, except said corporation respondent, being scavengers and garbage collectors in said city and county of San Francisco), have without the license or consent of your orator, and in defiance of the provisions of said order No. 2965 and the said order No. 12 (second series) hereinbefore referred to, obstructed, hindered and interfered with your orator in carrying out the said contract and franchise, and have, in violation of said resolutions and orders, daily diverted from your orator large quantities of the garbage and materials mentioned and described in said order No. 2965 and refused to deliver to your orator large quantities of said garbage and materials; and have, in violation of said resolutions and orders, daily removed through the public streets of said city and county from houses, hotels, markets, hospitals, factories, restaurants and stores large quantities of refuse, butchers' offal, garbage and other materials mentioned and referred to in said order, and deposited and dumped the same upon lands within said city and county other than at the buildings and works of your orator, and prevented your orator from cremating and destroying the same and thereby deprived your orator of the gains and profits justly belonging to your orator through and under its said franchise and contract hereinbefore alleged.

15. That a large number of the respondents other than said corporation respondent have, since the completion of your said orator's works, buildings and crematories, been repeatedly arrested by the police authorities of said city and county of San Francisco for their violation of the said resolutions, orders and ordinances of said city and county of San Francisco in dumping and depositing garbage other than at the works and crematories of your orator, and have been repeatedly convicted and fined by the police courts in and for said city and county for such violation of said orders, ordinances and resolutions, and notwithstanding such repeated convictions and fines by said police courts, said respondents persist in violating the terms of said orders, ordinances and resolutions, and continue in defiance of the laws of said city and county to dump and deposit said garbage and other materials at places other than at the works and crematories of your orator.

16. That the respondent, The California Reduction Company, was incorporated by some persons, whose names are unknown to your orator, under the laws of the State of Colorado for the express purpose of evading the operation of said orders, ordinances and resolutions hereinbefore alleged, and for the express purpose of depriving your orator of the gains and profits lawfully belonging to it from the operation of its said works, buildings and crematories, and for the express purpose of removing from the city and county of San Francisco by boats and barges large quantities of the said garbage and materials mentioned and referred to in said orders, ordinances and resolutions, and depositing the same on

lands in the county of San Mateo and elsewhere than at the works of your orator aforesaid and of preventing the same from being delivered to and incinerated and destroyed by your orator under the terms and conditions of the said orders, ordinances and resolutions.

17. That the respondents other than said respondent corporation, have combined, confederated and conspired with the said respondent corporation to deliver daily to said respondent corporation large quantities of said garbage and materials mentioned and referred to in said orders, ordinances and resolutions for the purpose of being by said respondent corporation taken from said city and county of San Francisco and deposited on lands in said county of San Mateo and elsewhere and to prevent the same from being delivered to and diverting the same from your orator in defiance of the terms and conditions of said orders, ordinances and resolutions, and for the purpose of depriving your orator of the gains and profits which would accrue to it by reason of the delivery to it of said garbage and materials for incineration under the terms of said orders, ordinances and resolutions; and said respondents give out and threaten that, *and* unless enjoined therefrom by this honorable
31 court, they will daily remove from said city and county of San Francisco large quantities of the garbage and materials mentioned and described in said orders, ordinances and resolutions, and which is daily collected by said respondents, other than said respondent corporation, from the houses, hotels, markets, hospitals, factories, restaurants, stores and other like building- and places in said city and county of San Francisco, through the public streets of said city and county, and will deposit and dump the same into barges or boats from the wharves and water front in said city and county of San Francisco and carry the same to the county of San Mateo and elsewhere, for the purpose of preventing the same reaching the buildings, works and crematories of your orator, and for the purpose of depriving your orator of all the gains and profits which would lawfully accrue to your orator under said orders, ordinances and resolutions.

18. That in order to carry out said confederacy and conspiracy, the said respondent corporation has already contracted in writing for the hire of two barges of large size and of a capacity to transport more than five hundred tons of garbage and the other materials mentioned and described in said orders, ordinances and resolutions, and openly give out and threaten that it will immediately commence to remove said garbage and other materials hereinbefore described at one of the public wharves upon the water front of and in said city and county of San Francisco, and will there cause the same to be dumped into said barges and thence transported
32 as frequently as said barges can be towed away to the county of San Mateo and elsewhere, to be there deposited and dumped, and have already begun to load said barges with said garbage and other materials for the purpose of preventing the same being delivered to your orator.

19. That by reason of the premises and said acts and doings of said respondents since the completion of your orator's works, buildings and crematories, the said contract between the said city and county of San Francisco and your orator and said franchise have become greatly depreciated and rendered of little value, and your orator has been greatly harassed, annoyed, injured and damaged hereby, to wit, in the sum of $25,000.

20. And your orator further shows unto your honors that portions of all of the garbage and other materials mentioned and described in said orders, ordinances and resolutions, are of value as articles of commerce, after being treated and reduced by your orator by processes both of reduction and incineration, which said articles of commerce when so reduced and incinerated are and have been heretofore sold and disposed of by your orator at a profit, and in this way it has derived a revenue and is remunerated for a portion of the labor and expense incurred by it in incinerating and cremating the garbage and refuse matter, with which said articles of commerce are mixed and combined. That the number of tons of garbage and other materials daily collected in said San Francisco and mentioned and described in said orders, ordinances and resolutions, and
33 all of which it is entitled to receive under its said contract and franchise, varies from month to month and is not a determinate or definite number. That by reason of the unlawful acts of the said respondents in removing the said garbage and said other matter hereinbefore described and dumping the same in other places than at the works, buildings and crematories of your orator, and by reason of the removal of a portion of the same from the city and county of San Francisco in open defiance of the provisions of said contract, franchise, orders, ordinances and resolutions, the amount of said garbage and said other materials has constantly, although not uniformly decreased. That by reason thereof, it is impossible for your orator to estimate or to calculate the profits which it will, or which it is likely to make in the future during the life of said contract and franchise by the delivery to your orator of all of the garbage and other materials described in and contemplated by the provisions of said contract and franchise hereinbefore described; and if your orator is deprived as aforesaid of the benefits arising under said contract and franchise, either in whole or in part, or of the rights and privileges, or any of them, granted and conferred by said contract and franchise, your orator will be deprived of large gains and profits which it would realize and enjoy from an uninterrupted exercise and enjoyment of said privileges and franchises and will suffer large damages therefrom, but it is impossible to state the amount of such gains and profits or the amount of such damages by reason of the facts hereinbefore alleged in this behalf.

34 21. And your orator further shows unto your honors that under the provisions of said orders, ordinances, and resolutions and the contract so entered into between your orator and the

said city and county of San Francisco, it is made obligatory upon your orator, and your orator is bound by the terms of said contract to incinerate and cremate all of the garbage and other materials collected in said city and county of San Francisco and described in said orders, ordinances and resolutions; and that if said respondents are permitted to divert from your orator the said garbage and other materials and to prevent the same from reaching the works and crematories of your orator, and preventing the same being incinerated and cremated by your orator, your orator will become liable to the city and county of San Francisco for its violation of said contract, orders, ordinances and resolutions in a large amount of money, the amount whereof cannot now be estimated, and will suffer great and irreparable injury thereby, which is now incapable of estimation, by reason of its neglect to carry out the terms and conditions of said contract, franchise, orders, ordinances and resolutions.

22. That your orator has requested the respondents to cease infringing upon your orator's rights and franchises granted and secured as aforesaid, and to desist from interfering with and obstructing, hindering and impeding your orator in the performance of its duty under its said contract and franchise, and to desist from diverting from your orator any of the garbage and materials hereinbefore described, and to cease and desist from unlawful doings and practices hereinabove alleged; but said respondents have wholly failed to comply with said demands or any part thereof, and threaten to, and unless restrained by this honorable court, will continue to infringe upon your orator's rights and franchises aforesaid as they have been doing in the past to your orator's great and irreparable injury and damage. That for such wrongs and injuries your orator has no plain, adequate and complete remedy at law.

23. That said respondent corporation has not yet commenced to engage in any business other than the entering into of the contract for hiring barges and boats hereinbefore alleged and in preparing to transport, and in commencing to transport, garbage and other materials in accordance with said contract. All which acts, doings and pretences are contrary to equity and good conscience and manifestly tend to the wrong and injury of your orator in the premises; in consideration whereof and forasmuch as your orator is without remedy in the premises in a court of law and cannot have adequate relief save in a court of equity where matters of this sort are properly relievable; to the end therefore that said respondents, and each of them, may according to the best and utmost of their knowledge, recollection and information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid as fully and completely as if the same were herein repeated and they thereunto separately, severally and respectively interrogated (an answer under oath being hereby waived);

Your orator prays that said respondents and each of them, their

agents, servants and employees and each of them be restrained and enjoined, both provisionally and perpetually, by an injunction issued out of this honorable court from directly or indirectly removing from the city and county of San Francisco, State of California, or depositing or dumping at any other place in said city and county of San Francisco, save and except at the works, buildings and crematories of your orator, as designated in and under the terms and conditions specified in said orders, ordinances and resolutions, any of the garbage or other materials in said orders, ordinances and resolutions hereinbefore described, during the life of the said contract and franchise hereinbefore alleged; that said respondents, and each of them, their agents, servants, workmen, and employees and each of them, be enjoined, both provisionally and perpetually, from obstructing, hindering and interfering with your orator in the delivery to your orator or the incineration and cremation by your orator of any of the garbage and said other materials mentioned and described in said orders, ordinances and resolutions, and from diverting from your orator any of said garbage and other materials, and from depositing the same at any other place in said city and county of San Francisco than at the works, buildings and crematories of your orator, under the terms and conditions of said order No. 2965 and also from infringing in any manner upon the
37 exclusive rights, privileges and franchises secured to your orator by the aforesaid orders, ordinances and resolutions, and from interfering with your orator in the performance of any duties thereunder, and that pending an application for a provisional injunction herein, your honors will grant a restraining order restraining the respondents from committing any of the acts aforesaid.

Your orator further prays that it have judgment against the respondents for the sum of $25,000.

May it also please your honors to grant unto your orator a writ of injunction, as well provisionally as perpetually, issuing out of and under the seal of this honorable court, as well as a restraining order on filing this bill restraining and enjoining the respondents and each and every of them, their servants, agents and employees, and each and every of them, as is hereinbefore in that behalf prayed.

May it also please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court directed to the said respondents, The California Reduction Company and S. Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcoa, D. Cemsangla, G. Cereghino, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Cosstante, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo,
38 A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frieni, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Jicento, F. Lanteri, C. Lercari, P. Lugi, V. Manliano, G. B. Molina,

E. Morini, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Noce, J. Paganini, G. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, First Italian, Second Italian, Third Italian, Fourth Italian, Fifth Italian, Sixth Italian, Seventh Italian, Eighth Italian, Ninth Italian, Tenth Italian, Eleventh Italian, Twelfth Italian, Thirteenth Italian, Fourteenth Italian, Fifteenth Italian, Sixteenth Italian, Seventeenth Italian, Eighteenth Italian, Nineteenth Italian, Twentieth Italian, Twenty-first Italian, Twenty-second Italian, Twenty-third Italian, Twenty-fourth Italian, Twenty-fifth Italian, Twenty-sixth Italian, Twenty-seventh Italian, Twenty-eighth Italian, Twenty-ninth Italian, Thirtieth Italian, Thirty-first Italian, Thirty-second Italian, Thirty-third Italian, Thirty-fourth Italian, Thirty-fifth Italian, Thirty-sixth Italian, Thirty-seventh Italian, Thirty-eighth Italian, Thirty-ninth Italian, Fortieth Italian, Forty-first Italian, Forty-second Italian, Forty-third Italian, Forty-fourth Italian, Forty-fifth Italian, Forty-sixth Italian, Forty-seventh Italian, Forty-eighth Italian, Forty-ninth Italian, and Fiftieth Italian, commanding them and each of them by a day certain, and on which certain day to be and appear in
39 this honorable court, and then and there to answer the premises and to stand to and abide by such order and decree as may be made against them.

May it please your honors also to grant unto your orator such other and further relief as may be meet and proper in the premises and conformable to equity.

And your orator will ever pray, etc.

PIERSON & MITCHELL,
Attorneys and Solicitors for Complainant.

WM. M. PIERSON,
Of Counsel for Complainant.

UNITED STATES OF AMERICA,
District of California, City and County of San Francisco, } ss:

L. R. Ellert, being duly sworn, deposes and says: That he is the President of The Sanitary Reduction Works of San Francisco, complainant above named; that he has heard read the foregoing bill of complaint, and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

L. R. ELLERT.

Subscribed and sworn to before me this 19th day of December, 1898.

[SEAL OF COURT.] SOUTHARD HOFFMAN,
Clerk of the Circuit Court for the Ninth Circuit, Northern District of California.

(Endorsed:) Filed December 19, 1898. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

40 *Subpœna ad Respondendum.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California. In Equity.

The President of the United States of America, Greeting: To the California Reduction Company, a corporation duly incorporated, organized, and existing under and by virtue of the laws of the State of Colorado, and S. Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Bissotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcona, D. Cemsangla, G. Cereghina, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Cosstante, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo, A. Figoni, L. Firpo, M. Foppiano, D. Frenase, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri; C. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Morni, P. Mornilli, A. C. Mosoni, D. Mozio, G. Muzio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Noce, J. Paganini, G. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M.
41 Tripo; G. Tuierlo, G. P. Turri, First Italian, Second Italian, Third Italian, Fourth Italian, Fifth Italian, Sixth Italian, Seventh Italian, Eighth Italian, Ninth Italian, Tenth Italian, Eleventh Italian, Twelfth Italian, Thirteenth Italian, Fourteenth Italian, Fifteenth Italian, Sixteenth Italian, Seventeenth Italian, Eighteenth Italian, Nineteenth Italian, Twentieth Italian, Twenty-first Italian, Twenty-second Italian, Twenty-third Italian, Twenty-fourth Italian, Twenty-fifth Italian, Twenty-sixth Italian, Twenty-seventh Italian, Twenty-eighth Italian, Twenty-ninth Italian, Thirtieth Italian, Thirty-first Italian, Thirty-second Italian, Thirty-third Italian, Thirty-fourth Italian, Thirty-fifth Italian, Thirty-sixth Italian, Thirty-seventh Italian, Thirty-eighth Italian, Thirty-ninth Italian, Fortieth Italian, Forty-first Italian, Forty-second Italian, Forty-third Italian, Forty-fourth Italian, Forty-fifth Italian, Forty-sixth Italian, Forty-seventh Italian, Forty-eighth Italian, Forty-ninth Italian, and Fiftieth Italian:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the courtroom in San Francisco, on the sixth day of February, A. D., 1899, to answer a

bill of complaint exhibited against you in said court by Sanitary Reduction Works of San Francisco, a corporation organized and existing under the laws of the State of California, and which is a citizen of the State of California, and to do and receive what the
42 said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 19th day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the 123d.

[SEAL.]

SOUTHARD HOFFMAN, Clerk,
By W. B. BEAIZLEY,
Deputy Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of February next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

SOUTHARD HOFFMAN, Clerk,
By W. B. BEAIZLEY,
Deputy Clerk.

Marshal's Return of Service of Subpœna.

Office of the United States Marshal for the Northern District of California.

I hereby return that I received the within writ on the 19th day of December, 1898, and personally served the same on the
43 19th day of December, 1898, on The California Reduction Company, C. Lercari, D. Calemarlia, L. Constiga, M. Foppiano, C. B. Carsona, A. Renote, J. Figoni, A. C. Mosoin, P. De Luci, on the 20th day of December, 1898, on L. Merlo, S. Gardelli, M. Conesita, V. Goardola, G. Rincallo, J. Muzio, Felix Anfibalo, M. Giovanni, D. Cereghino, J. Chiamonetti, C. Besazzi, L. Prassesecto, L. Raffo, Joe Demartini, G. Tinerolo, A. Filsopo, J. Biasotti, P. Segale, J. Brossi, G. Bertinia, D. Esposto, Fosoa Giavanini, F. Compe, on the 21st day of December, 1898, on G. P. Turre, P. Rusecti, L. Chivighino, Jr., B. Manliano, John Lucate, D. Frensse, L. Noce, F. Ratto, F. Rocco, E. Erigero, F. Boiselli, G. Paganini, Anton Marchano, P. Cartaracco, C. Muzio, F. Jicento, B. Pasqualetti, I. Peatro, N. Fidino, A. Caporance, G. B. Molianni, D. Mozio, D. De Martini, Firienzi Domici, P. Cosslante, F. Niuta, N. F. Atoni, M. Cuneo Domenci Muzio, A. Dondera, P. B. Perothi, P. Deveczi, M. Matero, P.

Muzio, by delivering to and leaving with Behrend Joost, president, and John Clemshire, secretary of The California Reduction Company, C. Lercari, D. Calemarlia, L. Constiga, M. Foppiano, C. B. Carsona, A. Renoto, J. Figoni, A. C. Mosoin, P. De Luci, on the 19th day of December, 1898, L. Merlo, S. Gardelli, M. Connesita, V. Goardola, G. Rincallo, J. Muzio, Felix Anfibalo, M. Giovanni, D. Cereghino, J. Chiamonetti, C. Besazzi, L. Bratsesecto, L. Raffo, Joe Demartini, G. Tinerolo, A. Filsopo, J. Biasotti, P. Segale, J. Rossi, G. Bertinia, D. Esposto, Fosca Giavanini, F. Compe, on the 20th day of December, 1898, G. P. Turre, P. Rusteci, L. Chivighino, Jr., B. Manliano, John Lucate, D. Frensse, L. Noce, F. Ratto, F. Rocco, E.
44 Erighero, F. Boiselli, G. Paganini, Anton Marchano, P. Cartaracco, C. Muzio, F. Jicento, B. Pasqualetti, I. Peatro, N. Fidino, A. Caporance, G. B. Molianni, D. Mozio, D. De Martini, Firieni Domici, P. Cosslante, F. Vinta, N. F. Atoni, M. Cuneo, Domeuci Muzio, A. Dondera, P. B. Perothi, P. Deveczi, M. Matero and P. Muzio, December 21st, 1898, said defendants therein named, at the city and county of San Francisco, in said northern district of California, an attested copy thereof.

San Francisco, Cal., December 31st, 1898.

JOHN H. SHINE,
United States Marshal,
By T. J. GALLAGHER,
Office Deputy.

[Endorsed:] Filed Jan. 3, 1899. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

In the Circuit Court of the United States for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Order to Show Cause and Restraining Order.

On reading and filing the verified bill of complaint in the above-entitled cause, and good cause appearing therefrom, therefore, it is ordered, that the respondents:

45 The California Reduction Company, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Colorado, and S. Antonio, D. Arkillo, A. Baciga-lupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcona, D. Cemsangla. G. Cereghino, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Cosstanta, G. Costa, M. Connesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Mar-

tini, J. Devencenzi, P. Devencinzi, A. Dondera, E. Erigoro, D. Esposto, M. Fidmo, A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, C. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Morini, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Noce, J. Paganini, G. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, First Italian, Second Italian, Third Italian, Fourth Italian, Fifth Italian, Sixth Italian, Seventh Italian, Eighth Italian, Ninth Italian, Tenth Italian, Eleventh Italian, Twelfth Italian, Thirteenth Italian, Fourteenth Italian, Fifteenth Italian, Sixteenth Italian, Seventeenth Italian, Eighteenth Italian, Nineteenth Italian, Twentieth Italian,
46 Twenty-first Italian, Twenty-second Italian, Twenty-third Italian, Twenty-fourth Italian, Twenty-fifth Italian, Twenty-sixth Italian, Twenty-seventh Italian, Twenty-eighth Italian, Twenty-ninth Italian, Thirtieth Italian, Thirty-first Italian, Thirty-second Italian, Thirty-third Italian, Thirty-fourth Italian, Thirty-fifth Italian, Thirty-sixth Italian, Thirty-seventh Italian, Thirty-eighth Italian, Thirty-ninth Italian, Fortieth Italian, Forty-first Italian, Forty-second Italian, Forty-third Italian, Forty-fourth Italian, Forty-fifth Italian, Forty-sixth Italian, Forty-seventh Italian, Forty-eighth Italian, Forty-ninth Italian, and Fiftieth Italian, show cause before this court, at the courtroom thereof in the appraisers' building in the city and county of San Francisco, district of California, on Monday, the ninth day of January, A. D. 1899, at the opening of the court on that day, or as soon thereafter as counsel can be heard, why a provisional injunction should not issue herein enjoining and restraining the respondents and each of them, their agents, servants and employees, and each of them, pending the above-entitled cause, from directly or indirectly removing from the city and county of San Francisco, State of California, or depositing or dumping at any other place in said city and county of San Francisco, State of California, save and except at the works, buildings and crematories of the complainant herein, situated on the block of land in said city and county of San Francisco, State of California, bounded by Rhode Island, Alameda, De Haro and Fifteenth streets,
47 any of the refuse, butchers' offal, garbage, dirt, ashes, cinders, sludge, crockery, tins, bones, or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food condemned by the board of health as unfit for human food, or dead animals whose removal is not otherwise provided for by contract or franchise heretofore granted by the said city and county of San Francisco.

And it appearing to the satisfaction of the court that said complainant is daily suffering irreparable injury by the acts of respondents alleged in the bill of complaint herein and sought to be re-

strained, and that said complainant has no plain, speedy or adequate remedy at law, and that this is a proper case for the issuance of a restraining order herein, and said complainant having filed herein a bond of $2,500.

It is therefore ordered, that the said respondents and each of them and their agents, servants, and employees, and each of them, are hereby restrained and enjoined until the hearing and decision of this order to show cause, from doing or committing any of the acts hereinabove mentioned.

And on the hearing of this order to show cause let the complainant use and read the said verified bill of complaint and the papers and files now on file in this court in the above entitled cause.

Order made December 19th, 1898.

WM. W. MORROW,
United States Circuit Judge.

48 Marshal's Return of Service of Order to Show Cause, etc.

Office of the United States Marshal for the Northern District of California.

I hereby return that I received the within writ on the 19th day of December, 1898, and personally served the same on the 19th day of December, 1898, on *the* The California Reduction Company, C. Lercari, D. Calemarlia, L. Constiga, M. Foppiano, C. B. Carsona, A. Renote, J. Figoni, A. C. Mosoin, P. De Luci, on the 20th day of December, 1898, on L. Merlo, S. Gardelli, M. Connesita, V. Goardola, G. Rincallo, J. Muzio, Felix Anfibalo, M. Giovanni, D. Cereghino, J. Chiamonetti, C. Besazzi, L. Brassesecto, L. Raffo, Joe De Martini, G. Tinerole, A. Filsepo, J. Biasotti, P. Segale, J. Rossi, G. Bertinia, D. Esposto, Fosoa Giananini, F. Compe, on the 21st day of December, 1898, on G. P. Turre, P. Rusecti, L. Chivighino, Jr., B. Manliano, John Lucate, D. Frensse, L. Noce, F. Ratto, F. Rocco, E. Erigero, F. Boiselli, G. Paganini, Anton Marchano, P. Cartaracco, C. Muzio, F. Jicento, B. Pasqualetti, I. Peatro, N. Fidino, A. Caporance, G. B. Molianni, D. Muzio, D. De Martini, Firienzi Domici, P. Cosslante, F. Vinta, N. F. Atoni, M. Cuneo, Domenci Muzio, A. Dondera, P. B. Perothi, P. Deveczi, M. Matero, P. Muzio, by delivering to and leaving with Behrend Joost, president, and John Clemshire, secretary of the California Reduction Company, C. Lercari, D. Calemarlia, L. Constiga, M. Foppiano, C. D. Carsona, A. Renote, J. Figoni, L.
49 A. C. Mosoin, P. De Luci on the 19th day of December, 1898, L. Merlo, S. Gardelli, M. Connesita, V. Goardola, G. Rincallo, J. Muzio, Felix Anfibalo, M. Giovanni, D. Cereghino, J. Chiamonetti, C. Besazzi, L. Brassesecto, L. Raffo, Joe De Martini, G. Tinerolo, A. Filsopo, J. Biasotti P. Segale, J. Rossi, G. Bertinia, D. Esposto, Fosoa Giavanini, F. Compe, on the 20th day of December, 1898; G. P. Turre, P. Rusteci, L. Chivighino, Jr., B. Manliano, John Lucate,

D. Frensse, L. Noce, F. Ratto, F. Rocco, E. Erighero, F. Boiselli, G. Paganini, Anton Marchano, P. Cartaracco, C. Muzio, F. Jicento, B. Pasqualetti, I. Peatro, N. Fidino, A. Caporance, G. B. Molianni, D. Mozio, D. De Martini, Firienzi Domici, P. Cosslante, F. Vinta, N. F. Atoni, M. Cuneo, Domenci Muzio, A. Dondera, P. B. Perothi, P. Devezi, M. Matero and P. Muzio, December 21st, 1898, said defendants therein, at the city and county of San Francisco, in said northern district of California, an attested copy thereof, together with a certified copy of complainant's bill.

San Francisco, Cal., December 31st, 1898.

JOHN H. SHINE,
United States Marshal,
By T. J. GALLAGHER,
Office Deputy.

(Endorsed:) Filed January 3, 1899. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

50 In the United States Circuit Court in and for the Northern District of California, Ninth Judicial Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.
No. 12714.

Several Answer of Respondent, The California Reduction Company.

The Several Answer of Respondent, The California Reduction Company, a Corporation, to the Bill of Complaint of the Above-named Complainant.

This respondent, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exceptions to the manifold errors and insufficiencies in the complainant's said complaint contained, for several answer unto, or unto so much thereof or such parts thereof as this respondent is advised is material for it to make answer unto, it answers and says as follows:

I.

That it does not know and cannot set forth as to its belief or otherwise, whether the facts set forth in paragraph number 1 of
51 said bill of complaint are true, but it has no reason to doubt that they are true, and therefore admits the same to be true, as therein set forth.

II.

That as to the allegation in paragraph number 2 of said complaint, that this respondent is a corporation, duly incorporated, or-

ganized and existing under and by virtue of the laws of the State of Colorado, and is a citizen of said State of Colorado, now within and now engaged in carrying on certain business as set forth in said complaint, in the city and county of San Francisco, State of California, and in the northern district of said State of California, this respondent admits the same to be true, and each and every part thereof.

III.

That as to the allegations in said paragraph number 2 of the said bill of complaint concerning the various respondents other than this respondent, this respondent alleges that it does not know and cannot set forth as to its belief or otherwise, whether the facts as set forth in paragraph number 2 of said complaint are true, but it has no reason to doubt that they are true, and therefore admits the same to be true, as therein set forth.

IV.

That it does not know and cannot set forth as to its belief or otherwise, whether the facts set forth in paragraph number 3 of said bill of complaint are true, but it has no reason to doubt that they are true, and therefore admits the same to be true, as therein set forth.

52

V.

That it does not know and cannot set forth as to its belief or otherwise, whether the facts set forth in paragraph number 4 of said complaint down to and including line number 53 of page number 4, save and except the words, "duly and finally passed, adopted and enacted," as set forth on line 34 on page 2 of said bill of complaint are true, but it has no reason to doubt that they are true, and therefore admits the same to be true, as therein set forth, save and except the said words, "duly and finally passed, adopted and enacted," as set forth on line 34 on page 2 of said bill of complaint.

VI.

That as to the words, "duly and finally passed, adopted and enacted," contained in line number 34 of said paragraph number 4 on page 2 of said bill of complaint, this respondent denies the same, and denies that the order No. 2995 referred to and set forth in said paragraph, was on the 17th day of February, 1896, or at any other time or at all, duly and finally passed, or adopted or enacted, or passed or adopted or enacted at all.

VII.

Further answering said paragraph 4 of said bill of complaint and lines 1 to 4 inclusive, on page 5 thereof, this respondent denies that said order did on the 17th day of February, 1896, or at any other

time, either by virtue of the premises, or under or pursuant to the provisions of "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of fran-
53 chises," approved March 23, 1893, or otherwise become a law of said city and county, or law of any place whatever.

VIII.

That this respondent does not know and cannot set forth as to its belief or otherwise, whether the facts set forth in paragraph number 5 of said bill of complaint are true, but it has no reason to doubt that they are true, and therefore admits the same to be true, as therein set forth.

IX.

That this respondent does not know and cannot set forth as to its belief or otherwise, whether the facts set forth in paragraph number 6 of said bill of complaint are true, and therefore admits the same to be true, as therein set forth.

X.

That this respondent does not know and cannot set forth as to its belief or otherwise, whether the resolution 903 (fourth series), and the order No. 12 (second series), referred to in paragraph No. 7 of said bill of complaint are in force as set forth in said paragraph No. 7, but it has no reason to doubt that they are and therefore admit the same to be true, as alleged in said paragraph number 7.

XI.

Further answering paragraph number 7, of said bill of complaint, this respondent denies that the order therein referred to, to wit, order 2965, ever was, or is now, in full force or effect, or of any force or affect whatever.

54 XII.

That answering paragraph 8 of said bill of complaint this respondent avers that it does not know and cannot set forth as to its belief or otherwise, whether said paragraph is true, but it has no reason to doubt that it is true, and therefore admits that it is true, as therein set forth.

XIII.

Answering paragraph 9 of said bill of complaint, this respondent avers that it is not true, and denies that by virtue of the premises, or otherwise, a good, valid, and substantial contract or any contract at all was made or entered into by and between the city and county of San Francisco as party of the first part, or at all, and said F. E. Sharon and his associates or assigns, or either said Sharon or his

associates or assigns; and denies that by reason thereof, or at all, or in any way, did said F. E. Sharon, or his associates or his assigns, or any of them, become entitled to have or to enjoy the sole of the exclusive, or either the sole or the exclusive privilege or privileges, right or rights, or franchise or franchises, specified or enumerated in said resolutions or orders or ordinances, or at all, for a period of fifty years from and after the said 17th day of February, 1896, or for any time after said date or at all.

XIV.

That it does not know and cannot set forth as to its belief or otherwise, whether the facts set forth in paragraph number 10 of said bill of complaint are true, but it has no reason to doubt that they are true, and therefore admits the same, as therein set forth.

XV.

That this respondent answering paragraph number 11 of said bill of complaint, denies that complainant has at any time fully erected or erected at all, or constructed or put in operation any suitable building or suitable buildings, and denies that complainant has equipped or fitted up or installed any buildings, or any suitable building or buildings with the necessary crematories, or with any proper crematories, or with any necessary or suitable machinery or appliances required to cremate or to destroy by cremation or by a process of reduction, all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones or either of them, or other like matter, or dead animals, or putrid vegetable matter, or fish, flesh, or food condemned by the board of health of the city and county of San Francisco as unfit for human food, or either of them.

XVI.

Further answering said paragraph number 11 of complainant's bill of complaint, this respondent admits that the buildings so constructed have a capacity of more than five hundred tons per day, and that complainant may be able to enlarge said capacity as required. That further answering paragraph number 11, and lines numbers 54, 55, 56, and 57 on page 7, and lines 1, 2, and 3, on page 8 of said complaint, this respondent avers that it has not sufficient knowledge or information of any of the allegations in said lines contained upon which to base a belief, and therefore denies the same, and each and every part thereof.

XVII.

Further answering said paragraph 11, and that part thereof commencing with the word "that" on line 3 of said page 8 thereof, and

extending to the end of said paragraph, this respondent denies that the contract and franchise so alleged to have been entered into is of great value, and, to wit, of more than twenty thousand dollars; and denies that complainant is entitled by reason thereof, to have the exclusive right or the privilege of incinerating or cremating all of the materials mentioned and provided for in said order; and denies that said contract or franchise will be rendered worthless and of no value, and denies that the money expended by complainant for machinery and property aforesaid, will be wholly lost and made worthless in whole or in part by reason of any acts of this respondent, or will be made of any less value than the same has ever been at any time heretofore, by reason of any of the acts of this respondent.

XVIII.

Answering paragraph number 12 of said bill of complaint, this respondent denies that complainant at any time has within twenty-four hours after the receipt of the substances and materials specified in said order No. 2965 cremated or reduced the same and subjected said materials, or any or all of them to complete combustion so that gases and odors did not arise therefrom;
57 and denies that complainant has during all of said time, or during part of said time, maintained or operated its plant and crematories and appliances, so that the materials and substances received by it were treated in such manner as to prevent obnoxious smells and gases from being emitted from the deposit of said materials and substances on the premises of complainant; and denies that no smoke or soot was emitted so as to constitute a nuisance from the process of cremation and other treatment, and from the residuum arising from cremation and treatment; and avers the fact to be that at all times since the commencement of the operation of said plant and crematory by complainant, that noxious smells, gases, smoke and partially incinerated matters, being the residuum from the materials treated and partially destroyed, have been emitted in such a way and manner as to constitute a nuisance to large portions of the population of the city and county of San Francisco, and particularly a nuisance to that portion of said city and county, and the residents thereof situate near and surrounding said plant and crematory of complainant.

XIX.

That respondent does not know and cannot set forth as to its belief or otherwise, whether the facts set forth in paragraph number 13, down to and including line 43 thereof, are true, but it has no reason to doubt that they are true, and therefore admits the same to be true, as therein set forth.

XX.

Further answering said paragraph 13, and that part thereof
58 commencing with line 44 on page 8 of said bill of complaint, and extending to the end of said paragraph 13, this respondent denies that complainant has faithfully performed and carried out all and singular the covenants, duties, and conditions imposed upon it by and in connection with said resolutions, orders and ordinances.

XXI.

Answering paragraph 14 of said complaint, this respondent denies that since the completion by complainant of its buildings, crematories and machinery, that this respondent has at any time ever with or within the license or consent of complainant, or in defiance of the provisions of any order, obstructed or hindered, or interfered with complainant in carrying out its said contract and franchise; and denies that it has in violation of any resolution or order daily or at any time diverted from complainant large or any quantity of garbage or materials in said paragraph referred to; and denies that it has refused to deliver to complainant large or any quantities of the materials in said paragraph referred to; and denies that in violation of said or any resolution or orders, that it has daily or at any time removed through the public streets of said city from any place, large or any other quantity of the materials referred to or mentioned in said paragraph; and denies that it has deposited or dumped the same upon lands within said city or county, or any other place; and denies that it has prevented complainant from cremating or destroying the same; and denies that it has deprived complainant of any gains or profits justly or otherwise
59 belonging to complainant through its franchise or contract, or in any way whatever.

XXII.

Answering paragraph number 15 of said bill of complaint, this respondent avers that it has no knowledge or information concerning the allegations of said paragraph, or of any of them, or any part thereof, sufficient to enable this respondent to form a belief as to the truth thereof, and therefore denies the same, and each and every part thereof.

XXIII.

Answering the allegations of paragraph number 16 of said bill of complaint, this respondent denies that it was formed under the laws of the State of Colorado for the express purpose of evading the operation of the orders, ordinances, and resolutions therein referred to, or any of them, and denies that it was formed for the express purpose of depriving complainant of the gains and profits lawfully or in any wise belonging to it from the operation of its

said works, buildings or crematories, or any of them. This respondent admits that it is duly incorporated in the State of Colorado, and was incorparted for the purpose, among other things, of removing from the city and county of San Francisco by boats and barges, large quantities of garbage and materials gathered and collected by this respondent, its servants, agents, and those with whom it might contract in the city and county of San Francisco aforesaid, and of depositing the same in the county of San Mateo, and elsewhere, outside of the city and county of San Francisco, but denies
60 that the same was done, or is done, or was contemplated being done, for the purpose of preventing said materials being delivered to and incinerated and destroyed by complainant under the terms referred to in said paragraph, or under any terms whatever; and this respondent avers the fact to be that its purposes in receiving and removing said garbage and other materials from the city and county of San Francisco at all times have been and are to do and perform a lawful business in a lawful way and manner in no wise connected with or dependent upon any rights or privileges possessed by complainant.

XXIV.

Answering paragraph 17 of said bill of complaint, this respondent denies that the respondents, other than this respondent, have combined or confederated or conspired with this respondent to deliver daily to this respondent large quantities or any quantities of garbage and materials referred to in said paragraph, for the purpose of being by this respondent taken from the city and county of San Francisco, and deposited in lands in San Mateo county and elsewhere, or for the purpose of preventing the same from being delivered to or diverted from complainant in defiance of any terms or conditions of any orders or resolutions named in said paragraph, or for the purpose of depriving complainant of the gain, gains and profits which would accrue to it by reason of the delivery of any of the materials in said paragraph named for incineration under the terms of any of the ordinances or resolutions on said paragraph named; and denies that it has given out or threat-
61 ened that unless enjoined therefrom by this honorable court, that it will daily or at any time remove from said city and county of San Francisco, large or any quantities of the garbage or materials mentioned in the orders or resolutions referred to in said paragraph, which are daily collected by the respondents other than this respondent from the places referred — in said paragraph, or any of them, and denies that the same will be deposited or dumped in the barges or boats of this respondent from the wharves or waterfront in said city and county, or from any place to be carried to the county of San Mateo or elsewhere, for the purpose of preventing the same reaching the buildings or the works or the crematories of said complainant, or for the purpose of depriving complainant of all or

any of the gains or profits which would lawfully or in any wise accrue to complainant under the orders and resolutions in said paragraph referred to, but avers the fact to be that this respondent has as a lawful business, and subject to all valid and subsisting laws or regulations now or hereafter to be passed, agreed with certain of the respondents in the above-entitled — to receive in the city and county of San Francisco the matters and substances referred to in said paragraph, and to take the same outside of the city and county of San Francisco for profit, totally and wholly without respect to complainant, and without any desire or intent to in any way injure or affect complainant, or to in any way deprive complainant of any rights or privileges that complainant has under and by virtue of any
62 contracts, orders, or resolutions, or ordinances of the said city and county of San Francisco, or otherwise.

XXV.

Answering paragraph number 18 of said bill of complaint, this respondent denies that in order to carry out said confederacy and conspiracy, or any confederacy or conspiracy, or for the purpose of preventing the materials referred to in said paragraph, or any of them, from being delivered to complainant, that it has done or caused to be done any of the acts referred to in said paragraph; but avers the truth to be that it has hired two barges for the purpose of conveying the materials in said paragraph referred to, to points outside of the city and county of San Francisco, and distant from said city and county of San Francisco, and to points so far from the said city and county of San Francisco that said materials when delivered can in no way affect said city and county of San Francisco, all of which has been done by this respondent as a lawful business and wholly without any reference to complainant.

XXVI.

Answering paragraph number 19 of said complaint, this respondent denies that by reason of the premises or by any reason, or by the acts and doings of this respondent, that complainant, since the completion of its said works, buildings and crematories, and its said alleged contract with said city and county of San Francisco, has been greatly harassed or annoyed or injured or damaged, or harassed, or injured, or damaged at all by respondent, or by any acts of
63 this respondent damaged in the sum of twenty-five thousand dollars, or any other sum, and denies that the franchise of complainant referred to in said paragraph has — greatly or in any way depreciated or rendered of little value, or in anywise affected by any acts of this respondent.

XXVII.

Answering paragraph number 20 of said complaint, this respondent admits that portions of all of the garbage and materials re

ferred to in said paragraph are of value as articles of commerce, and admits that after being treated and reduced by complainant, said articles of commerce have been sold and disposed of by complainant at a profit, and that a revenue was in that manner derived by complainant from said articles of commerce.

XXVIII.

Further answering said paragraph number 20 this respondent denies that complainant is entitled to receive under its said contract or franchise, or under any contract or franchise, all of the number of tons of garbage and other materials daily collected in San Francisco, and mentioned and described in the orders, ordinances, and resolutions referred to in said paragraph; and denies that it is by said orders, ordinances, and resolutions entitled to receive any of said materials other than those voluntarily taken by the owners and possessors thereof to said operating plant of complainant.

XXIX.

Further answering said paragraph number 20, this respondent admits that the number of tons of materials referred to in
64 said paragraph as taken to the plant of complainant, may vary from month to month, and is not definite or determinate in number; this respondent denies that by reason of any unlawful acts or any acts of this respondent in removing and dumping the garbage and materials in said paragraph referred to at places other than the buildings of complainant, or by reason of the removal of any portions thereof from the city and county of San Francisco in open defiance or in any defiance of the provisions of the contract, franchise, orders, ordinances, and resolutions in said paragraph referred to the amount of said materials has constantly decreased or has decreased at all; and denies that by reason of any acts of this respondent has any reduction been had of any of the matters referred to as delivered to complainant; and denies that by reason of anything in said paragraph contained it is impossible for complainant to estimate or calculate the profits which it will or which it is likely to make in the future during the life of the contract or franchise in said paragraph referred to by the delivery to complainant of all of the garbage and other materials described in or contemplated by the provisions of said contract or franchise; and denies that complainant is deprived, as set forth in said paragraph, or in any way, of the benefits arising under said contract or franchise, either in whole or in part, by any act had, done or contemplated by this respondent; and denies that complainant will be deprived of any of the rights and privileges, or any of them, granted or conferred by said contract or franchise; and
65 denies that complainant will be deprived of large or any gains or profits which it would realize or enjoy from an un-

interrupted or from any exercise or enjoyment of said privileges franchises, or either of them; and denies that complainant will s fer large damages from any act done or contemplated by this spondent that it would be otherwise entitled to; and denies that is impossible to state the amount of any damages suffered by co plainant by reason of anything in said complaint set out; and deni that this respondent, or any of these respondents' co-respondent have done anything, or contemplated the doing of anything th would in any way or manner injure complainant; but responde avers the truth to be that the said crematory plant of complaina has been operated continuously at its present location, and in t same manner that the same is operated at this time and at all tim with equal facilities for the operation thereof that the same is no operated with since the 8th day of November, 1897, and that duri like periods of like years and months there is no material differen in the amount of garbage and other materials referred to in sa paragraph that accumulate in said city and county, and that duri the period that complainant has been operating the said works, t business of complainant has acquired a stable status, and a status such a nature that any damages that may hereafter be sustained the business of complainant by reason of any act or acts of this r spondent, or of the co-respondents in this action, can be easily asce tained and determined and liquidated; and especially de 66 this respondent aver that the same is true with reference t such material as this respondent may transport from the sa city and county of San Francisco; and that all damages that ma accrue to complainant by reason of any acts of this respondent i said bill of complaint complained of, may be ascertained an liquidated by an ascertainment and determination of the amoun of garbage that this respondent takes from said city and county.

XXX.

Answering the 21st paragraph of said bill of complaint, this re spondent denies that under the provisions of the orders ordinance and resolutions and the contract referred to in said paragraph a entered into by and between complainant and the city and county of San Francisco, or by the provisions of any of them is it made ob ligatory upon complainant or is the complainants bound by the terms thereof to incinerate or cremate all of the garbage and othe matters collected in said city and county of San Francisco; and de nies that all of said garbage and like matters collected in said city and county of San Francisco *is* described in said orders, ordinances, resolutions, or any of them; and this respondent denies that if this respondent, or any or all of the co-respondents are permitted to divert from complainant said garbage and other matters, or any of said mat ters, or is permitted to prevent the same from reaching the works or crematory of complainant, or is prevented from being incinerated or cremated by com plainant, that complainant will become liable to the

city and county of San Francisco for any violations of said
67 contract, orders, ordinances, and resolutions, or any of them, or any contract, orders, ordinances, and resolutions in any large amount of money or in any amount of money; and denies that any amount would exist to be estimated; and denies any liability to the city and county of San Francisco by reason of a failure to deliver to complainant at its works or crematories, any or all garbage and matters referred to in said paragraph; and denies that complainant will suffer great or irreparable injury; and denies that any injuries suffered is incapable of estimation by reason of any of the facts aforesaid; and denies that a failure to burn or incinerate any matters not brought to the works of said complainant would be a neglect on the part of said complainant to carry out the terms or the conditions of the contract, franchise, orders, ordinances, and resolutions in said paragraph referred to.

XXXI.

Answering the 22d paragraph of said complaint, this respondent denies that it has ever been requested by complainant or any other person, to cease from infringing upon complainant's rights and franchises as set up in said paragraph; and denies that it has been requested to desist from interfering with or obstructing, hindering or impeding complainant in the performance of any duty under said contract or franchise; and denies that it has ever been requested to desist from diverting from complainant any of the garbage and matters referred to in said section; and denies that it has ever been requested to desist or desist from any unlawful doings or
68 practices, as in said complaint alleged or any doings or practices whatever; and denies that this respondent has wholly failed or has failed at all to comply with any demands or any part thereof; and denies that unless restrained by this honorable court that this respondent will continue to infringe upon complainant's rights or franchises; and denies that this respondent has at any time infringed upon any rights or franchises or contracts of complainant; and denies that any act done by this respondent has been of great and irreparable injury or damage to complainant, or of any injury or damage whatever; and denies that for the wrongs and injuries set up in said 22d paragraph, that complainant has no plain, adequate and complete remedy at law, but avers the fact to be that complainant has a plain, adequate and complete remedy at law for any wrongs or injuries by it sustained in the premises.

XXXII.

Answering the 23d paragraph of said complaint, this respondent admits that it has not yet commenced to engage in any business other than the hiring of barges and boats, and in preparing to transport and in commencing to transport garbage and other materials

from the city and county of San Francisco, to points distant from and outside of said city and county, but denies that the same has been done in accordance with any contract made by complainant with any person whatever.

69 XXXIII.

And this respondent denies all unlawful combinations, conspiracies, confederacies, arrangement, association, agreements or contracts as in said complaint charged, without this, that any other matter or thing material or necessary for this respondent to make answer unto, and not well and sufficiently answered unto, confessed or avoided, traversed or denied is true, to the knowledge or belief of this respondent.

And further answering said complaint, and by way of an affirmative defense thereto, this respondent avers:

1. That this respondent is, and long prior to the time of the filing of the above-entitled cause was a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, authorized to transact each and every of the acts and matters of business hereinafter referred to in the State of California.

2. That this respondent, from a time long prior to the commencement of the above-entitled cause, was engaged in, and until enjoined in the above-entitled cause, was actually operating a business, which said business consisted of receiving on the water front in the city and county of San Francisco, each and every of the articles referred to in order No. 2965, and set out in paragraph 4 of complainant's bill of complaint, to wit, garbage, house refuse, dirt, ashes, cinders, sludge, crockery, tins, bones, and other like matter, and dead animals, and putrid vegetable matter, and fish, flesh, and food condemned by the board of health of said city and county of San
70 Francisco, as unfit for human food, and of taking the same in barges from said water front to a point far distant from said city and county of San Francisco, and to places where the depositing of the same could in no way or manner affect any of the territory known as the city and county of San Francisco, and there disposing of the same.

3. That said business of this respondent at all times and at the time of the issuing of the restraining order in the above-entitled cause was conducted *subject* under and in accordance with all rules, regulations, ordinances, and resolutions of the city and county of San Francisco, and the board of health thereof, of a sanitary nature and character.

4. That said business, as conducted by this respondent, is a very profitable business, and a business from which respondent, at the time of the issuance of said restraining order, was realizing large sums of money and profit, and a business from which this respondent would now be realizing large profits were it not for the existence of said restraining order, and a business from which this respondent

in the future will realize large profits, if permitted by this honorable court to continue the same.

5. That the entire business as aforesaid as conducted by respondent in the city and county of San Francisco consists of receiving the matters hereinbefore enumerated from those persons only who are by license theretofore issued by the city and county of San Francisco and then in force, entitled to collect and to deliver the articles
71 received by this respondent in the way and manner that this respondent receives the same, and in accordance with all rules, regulations, ordinances, and orders of the city and county of San Francisco, and the board of health thereof.

6. That the matters and materials so received by respondent are not matters and materials that have been abandoned, but are property and of commercial value to this respondent.

7. That the business of this respondent is a lawful business, and is of great value to this respondent, to wit, of the value of one thousand dollars per month and upwards, and the property and materials so received by respondent are of value to respondent for commercial purposes, and are disposed of by respondent at places as before stated far distant from said city and county of San Francisco.

8. That each and every of the articles and materials so received by this respondent at no time while within the limits of the city and county of San Francisco are injurious to health and welfare of any of the people of San Francisco, and are not in themselves nuisances, and are removed by this respondent outside of and away from the city and county of San Francisco long prior to the time when said matters are or may become a nuisance.

And further answering said complaint, and by way of a second affirmative defense thereto, this respondent avers:

1. That in equity and good conscience complainant has no
72 right or ground to attempt to enforce any privilege claimed by it to exist under any of the orders, ordinances, or resolutions as set forth in its bill of complaint, in that complainant has wholly and absolutely failed to comply with the terms of section 5 of said order No. 2965, and has at all times failed, and does now fail to maintain and operate a plant and crematory and other apparatus in such a way and manner that they prevent any obnoxious smells or gases from being emitted from the deposit of garbage, house refuse, dirt, ashes, cinders, sludge, crockery, tins, bones, and other like matter and dead animals, and putrid vegetable matter, and fish, flesh, and food condemned by the board of health of said city and county of San Francisco, and unfit for human food, on the premises of said complainant, and also from preventing any obnoxious smells or gases from being emitted from the process of cremation or treatment of said matters, and also from preventing any obnoxious smells or gases from being emitted from the residuum after the cremation or treatment of said materials, and also in that the operation of said works are not conducted so as to prevent any

smoke or soot from being emitted so as to constitute a nuisance, but in truth and in fact said complainant has at all times conducted and operated, and now is conducting and operating, its said crematories and plant erected as provided in said order No. 2965, in such a way and manner that it has caused to be emitted from the smoke-stack thereof continuously at all times day and night from the commencement of the operation thereof up to the present time, large volumes of smoke, steam, va-
73 por, fumes, odors, refuse substances, obnoxious smells and gases, soot, and papers partially incinerated but not absolutely destroyed, being the residuum of the substances herein referred to as enumerated in said order No. 2965, as being attempted to be incinerated and destroyed in the business of said complainant in such a way and manner that each and every of the said matters enumerated as being emitted from said smoke-stack, blow over, across, upon and permeate the dwelling-houses of a large part and portion of the city and county of San Francisco, and particularly over, upon, and permeate the dwelling-houses of that portion of the inhabitants of the city and county of San Francisco residing within six blocks on all sides of said crematory, so that said matters so emitted are extremely offensive to the smell and nauseating, and render the occupation of said residences by the occupants thereof unpleasant and unfit for occupation as places of residence or business for human beings, in that the stench caused by said matters so emitted from said smokestack was and is unbearable, and in that the inhaling of the matters enumerated as emitted from said smoke stack materially injures the health of persons breathing the same, and causes sickness and death, and interferes with the comfortable enjoyment of life and property, and is a nuisance and hurt.

And further answering said complaint, and by way of a third affirmative defense thereto, this respondent avers:

74 1. That in equity and good conscience complainant has no right or ground to attempt to enforce any privilege claimed by it to exist under any of the orders, ordinances, or resolutions as set forth in its bill of complaint, in that complainant has wholly and absolutely failed to comply with the terms of section 1 of said order No. 2965, in that at all times since complainant has been operating its said works and now, complainant has charged and collected for the cremation and destruction of the said materials named in said section a sum in excess of the sum of twenty cents per load of a cubic yard upon the delivery of such materials at the plant or works of complainant, and has at all times refused to receive said materials except upon the payment to complainant by the person delivering said materials a sum in excess of twenty cents per load of a cubic yard, all of which said complainant has done, and is now doing in open violation and contrary to the express terms and provisions of said ordinance.

All of which matters and things this respondent is ready to aver, maintain, and prove, as this honorable court shall direct, and

humbly prays that the stay order awarded against this respondent by this honorable court on the 19th day of December, 1898, ought to be dissolved, and no injunction ought to be issued, and said complaint ought to be dismis-ed with costs, and this respondent be hence dismissed with its reasonable costs and charges in this
75 behalf most wrongfully expended.

THE CALIFORNIA REDUCTION CO.,
By JOHN CLEMISHIRE, Secretary.

[CORPORATE SEAL.]

BLACK & LEAMING,
Solicitors and of Counsel for Respondent,
The California Reduction Company.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

John Clemishire, being duly sworn, on oath deposes and says: That he is the secretary of the above-named respondent, The California Reduction Company; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters which are therein alleged on information and belief, and as to such matters he believes it to be true.

JOHN CLEMISHIRE.

Sworn and subscribed to before me this 27th day of December, 1898.

[SEAL.]

A. J. HENRY,
Notary Public in and for the City and County
of San Francisco, State of California.

Received copy of the within answer of the California Reduction Co. this 31st day of December, 1898.

PIERSON & MITCHELL,
Sol'rs of Complainant.

WM. M. PIERSON,
Of Counsel.

76 (Endorsed:) Filed December 31, 1898. Southard Hoffman, clerk.

In the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Northern District of California.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents. } No. 12714.

Rule Dismissing Bill as to California Reduction Company.

It appearing that on December 31, 1898, the above respondent, The California Reduction Company, served and filed its answer to the bill of complaint herein, and that January 2, 1899, the first rule day thereafter has passed, and that complainant has neglected and omitted to except to said answer or to file or serve any replication thereto, or to set said cause down for hearing on bill and answer, or to get further time, now, in accordance with the provisions of the law and rules of court, and on motion of Black & Leaming, solicitors and of counsel with respondent, The California Reduction Company,

it is ordered on this January 3, 1899, that the bill of com-
77 plaint filed herein be and the same hereby is dismissed as to the respondent, The California Reduction Company, and that the suit be and hereby is dismissed.

BLACK & LEAMING,
Solicitors and of Counsel for Respondent,
The California Reduction Co.

Entered Jan. 3, 1899.

SOUTHARD HOFFMAN, Clerk,
By W. BEAIZLEY, Deputy Clerk.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Replication to Answer of California Reduction Company.

This replicant, saving and reserving to himself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant and respondent, The California Reduction Company, for replication thereunto, saith, that it, this replicant, doth and will aver, maintain and prove its said bill to be true, certain and suf-

ficient in the law to be answered unto by the said defendant and respondent, The California Reduction Company, and that the
78 answer of the said defendant and respondent, The California Reduction Company, is very uncertain, evasive, and insufficient in law, to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied; is true; all of which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

PIERSON & MITCHELL,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of California, City and County of San Francisco, } ss:

William M. Pierson, being duly sworn, deposes and says: that he has read the foregoing replication to the answer of the defendant and respondent, The California Reduction Company, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

This affidavit is made by affiant for the reason that the president of said corporation complainant, L. R. Ellert, is not within the State of California, but is within the State of New York, and the secretary of said corporation, A. Sbaboro, is confined to his house with illness.

WM. M. PIERSON.

79 Subscribed and sworn to before me this 3d day of January, 1899.

[SEAL.] J. N. TURNER,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed January 3, 1899. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk. Withdrawn by order of court, Jan. 4, 1899. W. B. B., dep. clerk.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Order to Show Cause Why Rule Dismissing Bill Should Not Be Set Aside, etc., and Affidavit of Wm. M. Pierson.

On reading and filing the affidavit of Wm. M. Pierson, Esq., hereto attached, and good cause appearing therefor—

It is ordered that the defendant and respondent, The California Reduction Company, and Messrs. Black & Leaming, solicitors for said last-named defendant and respondent, show cause before
80 this honorable court at the courtroom theref on the fourth (4th) day of January, 1899, at the opening of court on that day or as soon thereafter as counsel can be heard, why an order should not be entered herein, authorizing and permitting the replication to the answer of the defendant and respondent, The California Reduction Company, filed herein on the 3rd day of January, 1899, to be filed *nunc pro tunc* as of the second day of January, 1899, and why the dismissal of the above-entitled cause, entered herein on the 2d day of January, 1899, should not be set aside and vacated, on the ground that the failure to file the said replication on said 2d day of January, 1899, was occasioned by the inadvertence, mistake and excusable neglect of the solicitors of the complainant herein, and, on hearing of this order, let the foregoing affidavit and this order and the files of the court in the above-entitled cause be read.

Order made January 3d, 1899.

WM. W. MORROW, Judge.

81 In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Affidavit on Order to Show Cause Why Rule Dismissing Bill Should Not Be Set Aside.

UNITED STATES OF AMERICA,
District of California, City and County of San Francisco, } ss:

Wm. M. Pierson, being duly sworn, on oath, says:

That he is, and at all times hereinafter mentioned was a member of the law firm of Pierson & Mitchell, solicitors for the complainant herein, and has had sole charge of the above cause.

That about midday of Saturday, the 31st day of December 1898, and at the time when affiant was leaving his office for the day, an answer on the part of the respondent herein, The California Reduction Company, was left at the office of affiant. That affiant did not examine said answer or read any portion of it at the time
82 when the same was so left at his office, and had no opportunity to do so for the reason that he had been telephoned for to go to the attorney-general's office to attend to a certain matter which had during the week previous been pending before the said attorney-general.

That on Sunday, the 1st day of January, 1899, affiant was unable to leave his home by reason of the stormy weather prevailing, and was unable to then examine the said answer.

That late in the afternoon of Monday, the 2d day of January, 1899, and which day was by the laws of the State of California made a legal holiday, he visited his office, and then for the first time examined the said answer.

That affiant did not know that the clerk's office of this honorable court was or would be open on said holiday, and supposed that his time for filing a replication to said answer would not expire until Tuesday, the 3d day of January, 1899, by reason of the fact that under said laws of the State of California the time within which an act was to be done was extended for one day in all cases where the last day for doing said act fell on a holiday.

That on the morning of the said 3d day of January, 1899, and as soon as the clerk's office of this honorable court was open, affiant is informed and believes and so avers the solicitors for the defendant and respondent, The California Reduction Company, applied to the clerk of this honorable court and entered an order for the dismissal of the above-entitled cause, upon the ground that no replica-
83 tion had been filed on said 2d day of January, 1899, and said order of said defendant solicitors was thereupon entered.

That affiant was not informed of said application to dismiss said cause until the opening of this honorable court on said 3d day of January, 1899, and immediately upon the adjournment of this court during the morning session thereof affiant prepared and had filed and served a replication to the said answer of the said defendant and respondent, The California Reduction Company.

Affiant further says that the failure to file the said replication on said 2d day of January, 1899, was through his inadvertence, mistake and excusable neglect, and for the reason that affiant supposed that the said 2d day of January, 1899, was not a rule day of this honorable court, that said day was a holiday, and that said clerk's office and this court would not be open for the transaction of business.

Affiant further says that the complainant herein is not only willing to speed the said cause but is anxious to do so and will submit to such terms as may be directed by this honorable court in the premises.

This *affiant* is made for the purpose of procuring an order from this honorable court that the replication, filed herein on the 3d day of January, 1899, may be filed *nunc pro tunc* as of the 2d day of January, 1899, and that the dismissal of said cause entered on said 2d day of January, 1899, be set aside and vacated.

WM. M. PIERSON.

84 Subscribed and sworn to before me this 3d day of January, 1899.

[SEAL.] J. N. TURNER,
Notary Public in and for the City and County of San Francisco, State of California.

Received copy of within affidavit and order to show cause this 3d day of January, 1899.

BLACK & LEAMING,
Solicitors for Respondent, The California Reduction Company.

(Endorsed:) Filed January 4, 1899. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

At a stated term, to wit, the November, term A. D. 1898, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the courtroom in the city and county of San Francisco, on Wednesday, the 4th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William W. Morrow, circuit judge.

SANITARY REDUCTION WORKS OF SAN FRANCISCO
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL. } No. 12714.

Order Granting Order to Show Cause to Vacate Rule Dismissing Bill of Complaint.

The order to show cause why the rule entered January 3d,
85 1899, dismissing complainant's bill herein should not be set aside, etc., came on to be heard this day. Wm. M. Pierson Esq., appeared for the complainant, and the application, and Alfred L. Black Esq., appeared for the respondents, *contra*, and after hearing the affidavit of Wm. M. Pierson, Esq., and the argument of the respective counsel, it was ordered that the application in said order to show cause be aid hereby is granted; that the rule dismissing complainant's bill of complaint be and it hereby is vacated and set aside; that complainant be and hereby is allowed to withdraw the replication to defendant's answer filed herein on January 3d, 1899, and have leave to file exceptions to said answer within ten days if so advised, and if exceptions be not filed, then, that complainant file a replication to said answer on or before February rule day.

In the United States Circuit Court in and for the Northern District of California, Ninth Judicial Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.
No. 12714.

Joint and Several Answer of All Respondents Except the Respondent The California Reduction Company.

The joint and several answer of respondents, S. Antonio,
86 D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brasi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcona, D. Censangla, G. Cereghino, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Costante, G. Costa, M. Counnesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo, A. Figoni, L. Firqo, M. Foppiano, D. Freusse, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, C. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Motini, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Noce, J. Paganini, G. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M. Tripe, G. Tuierolo, G. P. Turri, Guiseppe Arata, sued herein as First Italian, Luigi Brasetto, sued herein as Second Italian, Giovanni Caniscia, sued herein as Third Italian, Giuseppe Consigliere, sued herein as Fourth Italian, Antonio Campi, sued herein as Fifth Italian, Antonio Cuneo, sued herein as Sixth Italian, Giovanni Cagezzio, sued herein as Seventh Italian, Luigi Cararo, sued herein as Eighth Italian, Luigi Cereghino, sued herein as Ninth Italian, Vincinzo Chiosso, sued herein as Tenth Italian, Antonio Camicia, sued herein — Eleventh Italian, Giovanni Costa, sued herein as Twelfth Italian, Ginglio Demartini, sued herein as Thirteenth Italian, Paolo Demartini, sued herein as Fourteenth Italian, Angelo Devincenzi, sued herein as Fifteenth Ital-
87 ian, Antonio Delucchi, sued herein as Sixteenth Italian, Bartolomeo Devincenzi, sued herein as Seventeenth Italian, Antonio Dendero, sued herein as Eighteenth Italian, Emiglio Devincenzi, sued herein as Nineteenth Italian, Domenico Delucchi, sued herein as Twentieth Italian, G. B. Esspesta, sued herein as Twenty-first Italian, Luigi Figeni, sued herein as Twenty-second Italian, Abramo Fetetti, sued herein as Twenty-third Italian, G. B. Feppiano, sued herein as Twenty-fourth Italian, Angelo Ferrari, sued herein

as Twenty-fifth Italian, Giovanni Figeni, sued herein as Twenty-sixth Italian, Luigi Figeni, sued herein as Twenty-seventh Italian, Francesco Fraviga, sued herein as Twenty-eighth Italian, Giovanni Firenza, sued herein as Twenty-ninth Italian, Antonio Lucchitti, sued herein as Thirtieth Italian, Pietro Leonardini, sued herein as Thirty-first Italian, Giovanni Melinari, sued herein as Thirty-second Italian, Eluro Marini, sued herein as Thirty-third Italian, Firpe Michele, sued herein as Thirty-fourth Italian, Vitterio Muzio, sued herein as Thirty-fifth Italian, Giacome Muzio, sued herein as Thirty-sixth Italian, G. B. Mendani, sued herein as Thirty-seventh Italian, Luigi Muzio, sued herein as Thirty-eighth Italian, Agostino Muzio, sued herein as Thirty-ninth Italian, Pietro Mesante, sued herein as Fortieth Italian, Michele Nave, sued herein as Forty-first Italian, Domenico Picitti, sued herein as Forty-second Italian, Domenico Paganini, sued herein as Forty-third Italian, Luigi Peggi, sued herein as Forty-fourth Italian, Andrea Pedesta, sued herein as Forty-fifth Italian, Giovanni Pisigeni, sued herein as Forty-sixth Italian, Guiseppe Quiretto, sued herein as Forty-seventh Italian, Luigi Rappo, sued herein as Forty-eighth Italian, Francesco Ratto, sued herein as Forty-ninth Italian, Antonio Tescioma, sued herein as Fiftieth Italian, to the bill of complaint of the above named complainant admit, allege and deny as follows, to wit:

88 These respondents, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exceptions to the manifold errors and insufficiencies in the complainant's said complaint contained, for joint and several answer unto, or unto so much thereof or such parts thereof as these respondents are advised is material for them to make answer unto, answer and say as follows:

I.

That they do not know and cannot set forth as to their belief or otherwise, whether the facts set forth in paragraph number 1 of said bill of complaint are true, but they have no reason to doubt that they are true, and therefore admit the same to be true, as therein set forth.

II.

89 That as to the allegation in paragraph number 2 of said complaint, that the co-respondent, The California Reduction Company, is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Colorado, and is a citizen of said State of Colorado, now within and now engaged in carrying on certain business as set forth in said complaint, in the city and county of San Francisco, State of California, and in the northern district of said State of California, these respondents admit the same to be true, and each and every part thereof

III.

That as to the allegations in said paragraph number 2 of the said bill of complaint concerning the various respondents other than the respondent, California Reduction Company, these respondents admit the same to be true, as therein set forth.

IV.

That these respondents do not know and cannot set forth as to their belief or otherwise, whether the facts set forth in paragraph number 3 of said bill of complaint are true, but they have no reason to doubt that they are true, and therefore admit the same to be true, as therein set forth.

V.

That these respondents do not know and cannot set forth as to their belief or otherwise, whether the facts set forth in paragraph number 4 of said complaint down to and including line number 53 of page number, 4, save and except the words, "duly and finally passed, adopted and enacted," as set forth on line 34 on page 2 of said bill of complaint are true, but they have no reason to doubt that they are true, and therefore admit the same to be true, as therein set forth, save and except the said words, "duly and finally passed, adopted and enacted," as set forth on line 34 on page 2 of said bill of complaint.

90

VI.

That as to the words, "duly and finally passed, adopted and enacted," contained in line number 34 of said paragraph number 4 on page 2 of said bill of complaint, that these respondents deny the same, and deny that the order No. 2965 referred to and set forth in said paragraph was on the 17th day of February, 1896, or at any other time, or at all, duly or finally passed, or adopted or enacted, or passed or adopted or enacted at all.

VII.

Further answering said paragraph 4 of said bill of complaint, as to lines 1 to 4, inclusive, on page 5 thereof, these respondents deny that said order did on the 17th day of February, 1896, or at any other time, either by virtue of the premises, or under or pursuant to the provisions of "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises," approved March 23, 1893, or otherwise become a law of said city or county, or a law of any place whatever or any law whatever.

VIII.

That these respondents do not know and cannot set forth as to their belief, or otherwise, whether the facts set forth in paragraph num-

ber 5 of said bill of complaint are true, but they have no reason to doubt that they are true, and therefore admit the same to be true, as therein set forth.

91

IX.

That these respondents do not know and cannot set forth as to their belief or otherwise; whether the facts set forth in paragraph number 6 of said bill of complaint are true, and therefore admit the same to be true, as therein set forth.

X.

That these respondents do not know and cannot set forth as to their belief or otherwise, whether the resolution 903 (fourth series), and the order No. 12 (second series), referred to in paragraph No. 7 of said bill of complaint are in force as set forth in said paragraph No. 7, but they have no reason to doubt that they are true, and therefore admit the same to be true, as alleged in said paragraph No. 7.

XI.

Further answering paragraph number 7 of said bill of complaint, these respondents deny that the order therein referred to, to wit: order 2965 ever was or is now in full force and effect, or of any force or effect whatever.

XII.

That answering paragraph 8 of said bill of complaint these respondents aver that they do not know and cannot set forth as to their belief or otherwise whether said paragraph is true, and therefore these respondents deny that on the 18th day of February, 1896, or at any other time, or at all, the said F. E. Sharon mentioned in said order No. 2965, accepted the terms of said order No.

92 2965, duly or at all filed with the clerk of said board of supervisors his acceptance of the provisions of said order No. 2965, and of the franchise thereby granted, and these respondents deny that thereupon, or at all, said F. E. Sharon and his associates entered into and upon, and faithfully performed and carried out, all and singular, the covenants, duties and conditions imposed upon him by and in connection with said resolutions, orders and ordinances.

XIII.

Answering paragraph 9 of said bill of complaint, these respondents aver that it is not true, and deny that by virtue of the premises, or otherwise, a good, valid and substantial contract, or any contract at all, was made or entered into by and between the city and county of San Francisco as party of the first part, or at all, and said F. E. Sharon and his associaes or assigns, or either said Sharon or his associates or assigns; and deny that by reason

thereof, or at all, or in an- way, did said F. E. Sharon, or his associates or his assigns, or any of them, become entitled to have or to enjoy the sole or the exclusive, or either the sole or the exclusive, privilege or privileges, right or rights, or franchise or franchises, specified *ro* enumerated in said resolutions or orders or ordinances, or at all, for a period of fifty years from and after the said 17th day of February, 1896, or for any time after said date or at all.

XIV.

That these respondents do not know and cannot set forth
93 as to their belief or otherwise, whether the facts set forth in paragraph number 10 of said bill of complaint are true, but they have no reason to doubt that they are true, and therefore admit the same, as therein set forth.

XV.

That these respondents, answering paragraph number 11 of said bill of complaint, deny that complainant has at any time fully erected or erected at all or constructed or put in operation any suitable building or suitable buildings, and deny that complainant has equipped or fitted up or installed any buildings, or any suitable building or buildings with the necessary crematories, or with any proper crematories, or with any necessary or suitable machinery or appliances required to cremate or to destroy by cremation or by a process of reduction all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders; bones or either of them; or other like matter, or dead animals, or putrid vegetable matter, or fish, flesh or food condemned by the board of health of the city and county of San Francisco as unfit for human food, or either of them.

XVI.

Further answering said paragraph number 11 of complainant's bill of complaint, these respondents admit that the buildings so constructed have a capacity of more than five hundred tons per day, and that complainant may be able to enlarge said capacity as required. That further answering paragraph No. 11, and lines numbers 54, 55, 56 and 57 on page 7, and lines number 1, 2
94 and 3 on page 8 of said complaint, these respondents aver that they have not sufficient knowledge or information of any of the allegations in said lines contained upon which to base a belief, and therefore deny the same, and each and every part thereof.

XVII.

Further answering said paragraph 11, and that part thereof commencing with the word "that" on line 3 of said page 8 thereof, and extending to the end of said paragraph, these respondents deny that

the contract and franchise so alleged to have been entered into is of great value, and, to wit, of more than twenty thousand dollars; and deny that complainant is entitled by reason thereof to have the exclusive right or the privilege of incinerating or cremating all of the materials mentioned and provided for in said order; and deny that said franchise or contract will be rendered worthless and of no value, and deny that the money expended by complainant for machinery and property aforesaid will be wholly lost and made worthless in whole or in part by reason of any acts of these respondents, or will be made of any less value than the same has ever been at any time heretofore, by reason of any of the acts of these respondents.

XVIII.

Answering paragraph number 12 of said bill of complaint, these respondents deny that complainant at any time has, within twenty-four hours after the receipt of the substances and materials specified in said order No. 2965 cremated or reduced the same,
95 and subjected said materials, or any of them, or all of them, to complete combustion so that gases and odors did not arise therefrom; and deny that complainant has, during all of said time, or during part of said time, maintained or operated its plant and crematories and appliances, so that the materials and substances received by it were treated in such a manner as to prevent obnoxious smells and gases from being emitted from the deposit of said materials and substances on the premises of complainant; and deny that no smoke or soot was emitted so as to constitute a nuisance from the process of cremation and other treatment, and from the residuum arising from cremation and treatment; and aver the fact to be that at all times since the commencement of the operation of said plant and crematory by complainant, that noxious smells, gases, smoke and partially incinerated matters, being the residuum from the materials treated and partially destroyed, have been emitted in such a way and manner as to constitute a nuisance to large portions of the population of the city and county of San Francisco, and particularly a nuisance to that portion of said city and county, and the residents thereof situate near and surrounding said plant and crematory of complainant.

XIX.

That these respondents do not know and cannot set farth as to their belief or otherwise, whether the facts set forth in parrgraph number thirteen, down to and including line 43 thereof, are true, but they have no reason to doubt that they are true, and therefore admit the same to be true, as therein set forth.

96 XX.

Further answering said paragraph 13, and that part thereof commencing with line 44 on page 8 of said bill of complaint, and ex-

tending to the end of said paragraph 13, these respondents deny that complainant has faithfully performed and carried out all and singular the covenants, duties and conditions imposed upon it by and in connection with said resolutions, orders and ordinances.

XXI.

Answering paragraph 14 of said complaint, these respondents deny that since the completion by complainant of its buildings, crematories and machinery, that these respondents have at any time ever with or without the license or consent of complainant, or in defiance of the provisions of any order, obstructed or hindered, or interfered with complainant in carrying out its said contract and franchise; and deny that they have in violation of any resolution or order daily, or at any time, diverted from complainant large or any quantity of garbage or materials in said paragraph referred to; and deny that they have refused to deliver to complainant large or any quantities of the materials in said paragraph referred to; and deny that in violation of said or any resolution or order, they have daily or at any time removed through the public streets of said city from any place, large or any other quantity of the materials referred to or mentioned in said paragraph; and deny that they have deposited or dumped the same upon lands within said
97 said city or county, or any other place; and deny that they have prevented complainant from cremating or destroying the same; and deny that they have deprived complainant of any gains or profits justly or otherwise belonging to complainant through its franchise or contract, or in any way whatever.

XXII.

Answering paragraph number 15 of said complaint, these respondents deny that since the completion of complainant's said works, buildings and crematories, or at any other time, or at all, they have been repeatedly or at all arrested by the police authorities of the city and county of San Francisco for their violation of said resolutions, orders and ordinances of said city and county of San Francisco in dumping and depositing garbage other than at the works and crematories of complainant, and these respondents deny that they have been repeatedly convicted and fined by the police courts in and for said city and county for such violation of said orders, ordinances and resolutions, and deny that notwithstanding such repeated convictions and fines by said police courts, they persist in violating the terms of said orders, ordinances and resolutions, and continue in defiance of the laws of said city and county, or of any laws, to dump and deposit said or any garbage and other materials at places other than at the works and crematory of said complainant.

XXIII.

98 Further answering said paragraph number 15, these respondents aver that only two arrests have ever been made under order No. 2965, and that the prisoners were promptly released upon *habeas corpus* by the superior court of the city and county of San Francisco.

XXIV.

Further answering said paragraph number 15, these respondents aver that some of their number have been arrested and prosecuted under order No. 12 (second series) not by the regular police officers of the city and county of San Francisco, but by special officers under the exclusive hire, employ and pay of the complainant, and that in nearly all of these cases the defendants were found "not guilty," and that in all cases in which convictions were obtained, such convictions were based upon evidence showing that the accused was guilty, not of dumping or depositing garbage upon lots of streets of the city and county of San Francisco, but of selling to or taking to furnaces or factories, clean paper, paper boxes, and other house refuse, not deleterious to health, but material fit and valuable for fuel.

XXV.

Answering the allegations of paragraph number 16 of said bill of complaint, these respondents deny that the respondent California Reduction Company was formed under the laws of the State of Colorado for the express purpose of evading the operation of the orders, ordinances, and resolutions therein referred to, or any of them, and deny that said California Reduction Company was formed for the express purpose of depriving complainant of the gains and
99 profits lawfully or in any wise belonging to it from the operation of its said works, buildings or crematories, or any of them. These respondents admit that said California Reduction Company is duly incorporated in the State of Colorado, and was incorporated for the express purpose, among other things, of removing from the city and county of San Francisco by boats and barges, large quantities of garbage and materials gathered and collected by it and its servants, agents, and those with whom it might contract in the city and county of San Francisco aforesaid, and of depositing the same in the county of San Mateo and elsewhere, outside of the city and county of San Francisco, but deny that the same was done, or is done, or was contemplated being done, for the purpose of preventing said materials being delivered to and incinerated and destroyed by complainant under the terms referred to in said paragraph, or under any terms whatever; and these respondents aver the fact to be that the purpose of said California Reduction Company in receiving and removing said garbage and other materials from the city and

county of San Francisco has at all times been and is to do and perform a lawful business in a lawful way and manner in no wise connected with or dependent upon any rights or privileges possessed by complainant.

XXVI.

Answering paragraph 17 of said bill of complaint, these respondents deny that they have combined or confederated or conspired with said respondent corporation to deliver daily to said respond-
100 ent corporation large quantities or any quantities of garbage and materials referred to in said paragraph, for the purpose of being by said respondent corporation taken from the city and county of San Francisco, and deposited in lands in San Mateo county and elsewhere, or for the purpose of preventing the same from being delivered to or diverted from complainant in defiance of any terms or conditions of any orders or resolutions named in said paragraph, or for the purpose of depriving complainant of the gains and profits which would accrue to it by reason of the delivery of any of the materials in said paragraph named for incineration under the terms of any of the ordinances or resolutions in said paragraph named; and deny that they have given out or threatened that unless enjoined therefrom by this honorable court, they will daily or at any time remove from said city and county of San Francisco, large or any quantities of the garbage or materials mentioned in the orders or resolutions referred to in said paragraph, which are daily collected by them from the places referred to in said paragraph, or any of them, and deny that the same will be deposited or dumped in barges or boats from the wharves or water front in said city and county, or from any place to be carried to the county of San Mateo or elsewhere, for the purpose of preventing the same from reaching the buildings or the works or the crematories of said complainant, or for the purpose of depriving complainant of all or any of the gains or profits which would lawfully or in any wise accrue to complainant under the orders and resolutions in said paragraph referred to.

101 XXVII.

Answering paragraph number 18 of said bill of complaint, these respondents deny that in order to carry out said confederacy and conspiracy or any confederacy or conspiracy, or for the purpose of preventing the materials referred to in said paragraph, or any of them, from being delivered to complainant, that said respondent corporation has done or caused to be done any of the acts referred to in said paragraph; but avers the truth to be that said respondent corporation has hired two barges for the purpose of conveying the materials in said paragraph referred to, to points outside of the city and county of San Francisco, and distant from said city and county of San Francisco, and to points so far from the said city and county of San Francisco that said materials when delivered can in no way affect said city and county of San Francisco or the health of any of

its inhabitants, all of which has been done by said respondent corporation as a lawful business and wholly without any reference to complainant.

XXVIII.

Answering paragraph number 19 of said complaint, these respondents deny that by reason of the premises or by any reason, or by the acts and doings of these respondents, that complainant since the completion of its said works, building and crematories, and its said alleged contract with said city and county of San Francisco has been greatly harassed or annoyed or injured or damaged, or harassed, or injured, or damaged at all by these respondents, or
102 by any acts of these respondents in the sum of twenty-five thousand dollars, or any other sum, and deny that the franchise of complainant referred to in said paragraph, has greatly or in any way depreciated or been rendered of little value, or in any wise affected by any acts of these respondents.

XXIX.

Answering paragraph number 20 of said complaint, these respondents admit that portions of all of the garbage and materials referred to in said paragraph are of value as articles of commerce, and admit that after being treated and reduced by complainant, and many of them without being treated or reduced, said articles of commerce have been sold and disposed of by complainant at a profit, and that a revenue was in that manner derived by complainant from said articles of commerce.

XXX.

Further answering said paragraph number 20, these respondents deny that complainant is entitled to receive under its said contract or franchise or under any contract or franchise all of the number of tons of garbage and other materials daily collected in San Francisco, and mentioned and described in the orders, ordinances and resolutions referred to in said paragraph; and deny that it is by said orders, ordinances and resolutions entitled to receive any of said materials other than those voluntarily taken by the owners and possessors thereof to said operating plant of complainant.

108 XXXI.

Further answering said paragraph number 20, these respondents admit that the number of tons of materials referred to in said paragraph as taken to the plant of complainant, may vary from month to month and is not definite or determinate in number; these respondents deny that by reason of any unlawful acts or any acts of these respondents in removing and dumping the garbage and materials in said paragraph referred to at places other than the build-

ings of complainant, or by reason of the removal of any portions thereof from the city and county of San Francisco in open defiance or in any defiance of the provisions of the contract, franchise, orders, ordinances, and resolutions in said paragraph referred to the amount of said materials has constantly decreased or has decreased at all; and deny that by reason of any acts of these respondents has any reduction been had of any of the matters referred to as delivered to complainant; and deny that by reason of anything in said paragraph contained, it is impossible for complainant to estimate or calculate the profits which it will or which it is likely to make in the future during the life of the contract or franchise in said paragraph referred to by the delivery to complainant of all of the garbage and other materials described in or contemplated by the provisions of said contract or franchise; and deny that complainant is deprived, as set forth in said paragraph, or in any way, of the benefits arising under said contract or franchise, either in whole
104 or in part, by any act had, done or contemplated by these respondents, and deny that complainant will be deprived of any of the rights and priviledges, or any of them, granted or conferred by said contract or franchise; and deny that complainant will be deprived of large or any gains or profits which it would realize or enjoy from an uninterrupted or from any exercise or enjoyment of said privileges or franchises, or either of them; and deny that complainant will suffer large damages from any act done or contemplated by these respondents that it would be otherwise entitled to; and deny that it is impossible to state the amount of any damages suffered by complainant by reason of anything in said complaint set forth; and deny that these respondents have done anything, or contemplate the doing of anything that would in any way or manner injure complainant, but respondents aver the truth to be that the said crematory plant of complainant has been operated continuously at its present location, and in the same manner that the same is operated at this time and at all times with equal facilities for the operation thereof that the same is now operated with since the 8th day of November, 1897, and that during like periods of like years and months there is no material difference in the amount of garbage and other materials referred to in said paragraph that accumulate in said city and county, and that during the period that complainant has been operating the said works, the business of complainant has acquired a stable status, and a status of such a nature that any damages that may hereafter be sustained to the
105 business of complainant by reason of any act or acts of these respondents or of the co-respondent corporation in this action can be easily ascertained and determined and liquidated; and especially do these respondents aver that the same is true with reference to such material as these respondents may transport from the said city and county of San Francisco; and that all damages that may accrue to complainant by reason of any acts of these respondents in said bill of complaint complained of, may be ascertained

and liquidated by an ascertainment and determination of the amount of garbage that these respondents take from said city and county.

XXXII.

Answering the 21st paragraph of said bill of complaint, these respondents deny that under the provisions of the orders, ordinances and resolutions and the contract referred to in said paragraph as entered into by and between complainant and the city and county of San Francisco, or by the provisions of any of them, is it made obligatory upon complainant or is the complainant bound by the terms thereof to incinerate or cremate all of the garbage and other matters collected in said city and county of San Francisco; and deny that all of said garbage and like matters collected in said city and county of San Francisco is described in said orders, ordinances, resolutions or any of them; and these respondents deny that if they are permitted to divert from complainant said garbage and other matters, or any of said matters, or are permitted to
106 prevent the same from reaching the works or crematory of complainant, or are prevented from being incinerated or cremated by complainant, that complainant will become liable to the city and county of San Francisco for any violations of said contract, orders, ordinances and resolutions, or any of them, or any contract, orders, ordinances, and resolutions in a large amount of money, or in any amount of money; and deny that any amount would exist to be estimated; and deny any liability to the city and county of San Francisco by reason of a failure to deliver to complainant at its works or crematories, any or all garbage and matters referred to in said paragraph; and deny that complainant will suffer great or irreparable injury; and deny that any injuries suffered *is* incapable of estimation by reason of any of the facts aforesaid; and deny that a failure to burn or incinerate any matters not brought to the works of said complainant would be a neglect on the part of said complainant to carry out the terms or the conditions of the contract, franchise, orders, ordinances and resolutions in said paragraph referred to.

XXXIII.

Answering the 22d paragraph of said complaint, these respondents deny that they have ever been requested by complainant or any other person, to cease from infringing upon complainant's rights and franchises as set up in said paragraph; and deny that they have been requested to desist from interfering with or obstructing, hindering or impeding complainant in the performance of
107 any duty under said contract or franchise; and deny that they have ever been requested to desist from diverting from complainant any of the garbage and matters referred to in said section; and deny that they have ever been requested to desist from any unlawful doings or practices as in said complaint

alleged, or from any doings or practices whatever; and deny that these respondents have wholly failed at all to comply with any demands or any part thereof; and deny that unless restrained by this honorable court that these respondents will continue to infringe upon complainant's rights or franchises; and deny that these respondents have at any time infringed upon any rights or franchises or contracts of complainant; and deny that any acts done by these respondents have been of great and irreparable injury or damage to complainant, or of any injury or damage whatever; and deny that for the wrongs and injuries set up in said 22d paragraph, or any other paragraph of said complaint, that complainant has no plain, adequate and complete remedy at law, but avers the fact to be that complainant has a plain, adequate and complete remedy at law for any wrongs or injuries by it sustained in the premises.

XXXIV.

Answering the 23d paragraph of said complaint, these respondents admit that said respondent corporation has not yet commenced to engage in any business other than the hiring of barges and boats, and in preparing to transport and in commencing to transport garbage and other materials from the city and county of San
108 Francisco, to points distant from and outside of said city and county, but deny that the same has been done in accordance with any contract made by complainant with any person whatever.

And further answering said complaint and by way of an affirmative defense thereto, these respondents jointly and severally aver that the board of supervisors of the city and county of San Francisco, State of California, did not duly and finally pass, adopt and enact said alleged order number 2965, set forth in paragraph 4 of said bill of complaint on the 17th day of February, 1896, or at any other time, or at all, and these respondents in this behalf allege the following facts:

I.

That the complainant, Sanitary Reduction Works of San Francisco, is a corporation formed and organized under the laws of the State of California for the purpose, among other things, of doing and performing as his grantee and successor all the acts and duties imposed upon F. E. Sharon by said order number 2965.

II.

That on the 18th day of November, 1895, the board of supervisors of the city and county of San Francisco, adopted a resolution known as resolution No. 13,231 (third series), reciting that application has been made to said board by various persons for a franchise for the term of fifty years for the sole right and privilege to cremate garbage, house refuse, dead animals and putrid vegetables matter and

material of like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable,
109 and to convert the same, or a portion thereof, into fertilizing matter or other substances, free of all costs or charge to said city and county. That in and by said resolution it was provided that the clerk of said board should advertise for proposals for the sale of said franchise in compliance with the requirements of an act of the legislature of the State of California, entitled "An act providing for the sale of railroad and other franchises in municipalities and relative to granting of franchises," approved March 23, 1893, and that said proposed franchise should confer the rights and privileges specified in a certain proposed order set forth and incorporated in said resolution No. 13,231 (third series), which said proposed order was and is the same as said order No. 2965 set forth in complainant's said bill of complaint.

III.

That in obedience to said resolution No. 13,231, and in compliance with said act of the legislature, the clerk of said board did advertise a notice for proposals for said franchise to be received in open session of said board on Monday afternoon, January 6, 1896, from 3 to 3.30 o'clock.

IV.

That in pursuance of said notice, three proposals, offers or bids for said franchise were received at the meeting of said board held on the 6th day of January, 1896; that said proposals, offers or bids were made by L. V. Merle, F. E. Sharon and A. M. Skelly, and were accompanied by certified checks for the respective amounts bid for the franchise as required by said notice, and are in the words and figures following, to wit:

110 Proposal of L. V. Merle.

SAN FRANCISCO, January 6, 1896.

To the honorable the board of supervisors of the city and county of San Francisco.

GENTLEMEN: Pursuant to resolution No. 13,231 (third series), herewith annexed, I hereby offer to build crematories required by said resolution, of the capacity satisfactory to the board of supervisors, the probable cost of which will be in the neighborhood of one hundred thousand (100,000) dollars, and with a capacity to cremate at least three hundred (300) tons per day.

The general character and capacity of the works to be erected will be as those used in Philadelphia, Detroit and Washington, and for the sole privilege of cremating refuse, butchers' offal, garbage and other material mentioned in section 3 of the above referred to order.

I hereby bid for the franchise referred to in said order the sum of fifty-five hundred (5500) dollars, for which amount I herein enclose my certified check.

Respectfully, L. V. MERLE.

Proposal of F. E. Sharon.

SAN FRANCISCO, January 6, 1896.

To the honorable the board of supervisors of the city and county of San Francisco.

GENTLEMEN: The undersigned hereby tenders the following proposal for the franchise for the cremation of garbage, under proposals called for by your honorable board, and in conformity with
111 the provisions of an act of the legislature of the State entitled, "An act providing for the sale of railroad and other "franchises in municipalities, and relative to granting of franchises," approved March 23, 1893, and, as required, hereby submit a certified check; payable to the clerk of your honorable board, for the sum of $2,510, which said clerk is hereby empowered to draw and pay the same into the city and county treasury, if I am the highest bidder, the bid being as follows, in strict conformity with your advertisement, a copy of which is hereby attached and made a part hereof, to wit:

For the franchise, the sum of..... $2,510.00

In addition I will agree to pay a percentage into the city and county treasury on the gross annual receipts during the continuance of the franchise, as follows:

For the first fifteen years, each year..... 2 per cent
Each and every succeeding year..... 5 per cent

The general character and capacity of the works will be of the most approved pattern and subject to your approval and they will have a capacity, when first put in operation, for cremating 250 tons of garbage, etc., daily, and the estimated cost will exceed $100,000.

Very respectfully, F. E. SHARON.

Proposal of A. M. Skelly.

SAN FRANCISCO, January 6, 1896.

To the honorable the board of supervisors of the city and county of San Francisco.

GENTLEMEN: On condition that I obtain the franchise for the cremation of garbage under this bid for the term of fifty
112 years, as called for by your duly published notice inviting proposals, my bid is as follows:

For the franchise as advertised, the sum of..... $1,105.00
On the gross annual receipts for the first fifteen (15) years, a percentage of..... 1 per cent.
On the gross annual receipts for the second period of fifteen (15) year-..... 2 per cent.
On the gross annual receipts for each and every year thereafter..... 3 per cent.

A certified check for the sum of $1,105 is herewith enclosed, payable to the clerk of your honorable board.

Respectfully submitted, A. M. SKELLY.

V.

That action on said proposals, offers or bids was postponed by said board from time to time until the meeting of said board held on the 17th day of February, 1896, at which meeting said proposals, offers or bids were taken up, and an ordinance known and called order number 2965, being the same set forth in said bill of complaint, was attempted to be passed by said board purporting to grant said franchise to F. E. Sharon, his associates and assigns.

VI.

Respondents further allege on information and belief, that thereafter said F. E. Sharon assigned, transferred and set over to The Sanitary Reduction Works of San Francisco, the complainant herein, all the rights and privileges pretended to have been acquired by him under and by virtue of said alleged order number 2965.

113 That said order number 2965 is null and void, and of no force or effect in law, and did not confer upon said F. E. Sharon any of the rights, privileges or franchises enumerated and set forth in said order, and did not and does not by virtue of said assignment confer upon said complainant any of the rights, privileges or franchises enumerated and set forth in said alleged order for the reason that the said F. E. Sharon was not the highest bidder for said franchise, and that his proposal, offer or bid for said franchise was not the highest and best bid therefor.

VII.

That this complainant by virtue of said alleged order number 2965 and said assignment, and not otherwise, now falsely claims and pretends that it holds the rights, privileges and franchises enumerated and set forth in said alleged order number 2965, and this complainant does unlawfully exercise and usurp the rights, privileges and franchises enumerated and set forth in said order number 2965, to wit: the right and privilege to cremate and destroy garbage, house refuse, dead animal and putrid vegetable matter and material of like character within the city and county of San

Francisco, by crematories or by a process of reduction, and to charge and collect therefor the sum of twenty cents per load, such load not to exceed a cubic yard, on the delivery of the above material or substances at the plant or works where the crematory or reduction plant of said complainant is established.

Further answering said complaint and by way of a second
114 affirmative defense thereto, these respondents jointly and severally aver that in equity and good conscience complainant has no right or ground to enforce any privilege claimed by it under said order number 2965 set forth in paragraph 4 of its said bill of complaint for the reason that said complainant has never attempted to fully or at all carry out and faithfully perform the obligations imposed upon it by said order, but on the contrary, has at all times violated the terms and provisions thereof, and does now violate the terms and provisions of said order by charging and collecting from these respondents, and from all persons and corporations delivering any of the materials or substances enumerated in said order at its crematory for cremation or reduction, a sum or sums far in excess of twenty cents per cubic yard for each and every cubic yard of such material so delivered. These respondents further aver that ever since its crematory or reduction works have been in operation, said complainant has charged and collected, and at the present time does charge and collect from these respondents, and from all persons or corporations delivering material for cremation or reduction, sums ranging from twenty-five to forty cents per cubic yard for each and every cubic yard of said material so delivered, contrary to and in violation of said order, and that said complainant has at all times refused to receive said materials except on payment to it by the persons delivering the same of a sum in excess of twenty cents per cubic yard, all of which said complainant has done and is now doing in open violation and contrary to the express terms and provisions of said ordinances.

115 And further answering said complaint, and by way of a third affirmative defense thereto, this respondent avers:

That in equity and good conscience complainant has no right or ground to attempt to enforce any privilege claimed by it to exist under any of the orders, ordinances, or resolutions as set forth in its bill of complaint, in that complainant has wholly and absolutely failed to comply with the terms of section 5 of said order No. 2965, and has at all times failed, and does now fail to maintain and operate its plant and crematory or other apparatus in such a way and manner so as to prevent any obnoxious smells or gases from being emitted from the deposit of garbage, house refuse, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, and dead animals, and putrid vegetable matter, and fish, flesh, and food condemned by the board of health of said city and county of San Francisco, and unfit for human food, on the premises of said complainant; and also that said complainant has at all times failed and does now fail from preventing any obnoxious smells or gases from being

emitted from the process of cremation or other treatment of said matters, and also from preventing any obnoxious smells or gases from being emitted from the residuum after the cremation or treatment of said materials; and these respondents further allege that in the operation of said works said complainant has not conducted the same so as to prevent any smoke or soot from being emitted so as to constitute a nuisance; but in truth and in fact said complainant has at all times conducted and operated, and now is so conducting
116 and operating its said crematories and plant erected as provided in said order No. 2965, in such a way and manner that it has caused to be emitted from the smokestack thereof continuously at all times day and night from the commencement of the operation thereof up to the present time, large volumes of smoke, steam, vapor, fumes, odors, refuse substances, obnoxious smells and gases soot, and papers partially incinerated but not absolutely destroyed being the residuum of the substances referred to in said order No. 2965. That each and every of the said matters enumerated as being emitted from said smokestack blow over, across, upon and permeate the dwelling-houses of a large part and portion of the city and county of San Francisco, and particularly over, upon, and permeate the dwelling-houses of that portion of the inhabitants of the city and county of San Francisco residing within six blocks on all sides of said crematory; that said matters so emitted are extremely offensive to the smell and nauseating, and render the occupation of said residences by the occupants thereof unpleasant and unfit for occupation as places of residence or business for human beings, and that the stench caused by said matters so emitted from said smokestack was and is unbearable, and that the inhaling of the matters enumerated as emitted from said smokestack materially injures the health of persons breathing the same, and causes sickness and death and interferes with the comfortable enjoyment of life and property, and is a nuisance and hurt.

Further answering said complaint and by way of a fourth affirmative defense thereto these respondents jointly and severally aver:

117 I.

That these respondents jointly and severally and long prior to the time of the filing of the above-entitled cause each have been residents and householders of the city and county of San Francisco.

II.

That these respondents during the times hereinbefore named and now have been, as householders, producing and creating large quantities of each and every of the articles referred to in order No. 2965 and set out in paragraph 4, plaintiff's bill of complaint, to wit: garbage, house refuse, dirt, ashes, cinders, sludge, crockery, bones, tins and other like matter, and that heretofore at all times and

these respondents have jointly and severally each taken said articles and in wagons duly licensed by said city and county of San Francisco, have carried said articles to places within the city and county of San Francisco where they have been able to sell and dispose of the same for value.

III.

That the value of some of said articles, to wit: of bones, is the sum of $10 per ton; of tins and of many of the other of said articles of prices ranging from $3 to $10 per ton.

IV.

That the matters and materials so produced and disposed of by these respondents are not matters and materials that have
118 been abandoned, but are property and are of commercial value to each of these respondents.

V.

That these respondents, and each of them, have the rights, and in accordance with that right have at all times disposed of each and every of the materials by them so produced in a way and manner that each and every of said articles have produced or could produce no injury to the health or welfare of the people of the city and county of San Francisco, in that they are not of themselves nuisances and are removed, sold and disposed of by these respondents and each of them long prior to the time when said matters or any of them have or could become a nuisance.

For a further answer to said complaint and by way of a fifth affirmative defense thereto, these respondents jointly and severally aver and say:

I.

That they are and for a long time prior to the filing of the above-entitled cause each of them has been a scavenger by trade and occupation, and have been engaged in the business of scavengering in the city and county of San Francisco, State of California.

II.

That in said business they collect in the city and county of San Francisco each and every of the articles referred to in order No. 2965 set out in paragraph 4 of complainant's bill of complaint, to wit: garbage, house refuse, dirt, ashes, cinders, sludge,
119 crockery, tins, bones and other like matter, and dead animals and putrid vegetable matter and fish, flesh and food condemned by the board of health of said city and county of San Francisco as unfit for human food, and that in the collection of said articles they and each of them have at all times herein referred to

conducted their said business subject to and under and in accordance with all rules, regulations, ordinances, orders, and resolutions of the city and county of San Francisco, and the board of health thereof.

III.

That in order to carry on said business as aforesaid these respondents and each of them have procured from said city and county of San Francisco licenses whereby they are licensed by said city and county to transact and carry on and conduct the business of scavengers as herein referred to, and that at all times herein referred to, and now, each and every of said respondents have conducted and are now conducting and carrying on said business strictly in accordance with all rules and regulations, ordinances, orders and resolutions of said city and county of San Francisco, and the board of health thereof, and in accordance with the rights and privileges granted to them by the licenses as issued to them as hereinbefore referred to.

IV.

That said business as conducted by each of these respondents in the collection of the articles hereinbefore referred to includes
120 the collection of paper, rags, bones, brass, copper, tins, clippings, excelsior, boxes, and all classes and kinds of waste from houses, hotel-, restaurants and like places, which said articles are of commercial value and vary in value from 1-10th of one cent to ½ of one cent per pound.

V.

That said business so conducted by these respondents and each of them is a very profitable business, and a business from which each of these respondents at the time of the issuance of the restraining order herein granted was realizing large sums of money and profit, and a business in which these respondents and each of them would now be realizing large sums of money and large profits, were it not for the existence of said restraining order, and a business from which these respondents and each of them will in the future realize large profits if permitted by this honorable court to continue the same. That these respondents are permitted by the orders, ordinances, resolutions and licenses hereinabove referred to, to sell and dispose of the articles gathered by these respondents and each of them, as hereinbefore set out.

VI.

That at the time of the issuance of said restraining order these respondents had employed their correspondent, The California Reduction Company, to receive from them any and all of such of the articles hereinbefore referred to as collected and gathered by them, as these respondents were unable to sell or dispose of to advantage, and
121 had employed their said co-respondent, The California Reduction Company, to take and carry all of said articles so delivered

to them from said city and county of San Francisco and to a point so distant from said city and county of San Francisco that the same could in no wise affect said city and county, or the health of its inhabitants, and at the time of the issuance of said order were engaged in so delivering said matters to said co-respondent, The California Reduction Company.

VII.

That at the time of the delivery of said articles by these respondents and each of them to the said co-respondent, The California Reduction Company, each and every of the articles so delivered were in a good state of preservation and were in no sense nuisances, and were removed and being removed from said city and county of San Francisco in the way and manner aforesaid by the co-respondent, The California Reduction Company, long prior to any time that any of said articles had or could become nuisances or any injury to the health of the people of the city and county of San Francisco.

VIII.

That each and every of the acts had and done by these respondents and each of them, as set up on this affirmative defense, have been had and done in accordance with law and in accordance with the natural rights and privileges of these respondents and each of them.

In conclusion these respondents deny all unlawful combinations, conspiracies, confederacies, arrangements, association, agree-
122 ments or contracts as in said complaint charged, without this, that any other matter or thing material or necessary for these respondents to make answer unto, and not well and sufficiently answered unto, confessed or avoided, traversed or denied is true, to the knowledge or belief of these respondents.

All of which matters and things these respondents are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray that the stay order awarded against these respondents by this honorable court on the 19th day of December, 1898, ought to be dissolved, and no injunction ought to be issued, and said complaint ought to be dismissed with costs, and these respondents be hence dismissed with their reasonable costs and charges in this behalf most wrongfully expended.

PAGE, McCUTCHEN & EELLS,
GARRET W. McENERNEY,
Solicitors and of Counsel for Respondents.

Service of a copy of the within answer is hereby admitted this 7th day of January, 1899, at 2 o'clock p. m.

PIERSON & MITCHELL,
Solicitors for Complainant.

(Endorsed:) Filed January 7, 1899. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

123 In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Replication to Answer of the California Reduction Company.

This replicant, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant and respondent, The California Reduction Company, for replication thereunto, saith that it, this replicant, doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant and respondent, The California Reduction Company, and that the answer of the said defendant and respondent, The California Reduction Company, is very uncertain, evasive, and insufficient in law, to be replied unto by said replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to
124 be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

PIERSON & MITCHELL,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of California, City and County of San Francisco, } ss:

L. R. Ellert, being duly sworn, deposes and says: That he is an officer, to wit, the president of the complainant corporation herein; that he has read the foregoing replication to the answer of the defendant and respondent, The California Reduction Company, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

L. R. ELLERT.

Subscribed and sworn to before me this 4th day of February, 1899.

[SEAL.] EUGENE W. LEVY,
Notary Public in and for the City and County of San Francisco, State of California.

125 Service of within replication is hereby admitted this 6th day of February, 1899.

BLACK & LEAMING,
Solicitors for Respondent, The California Reduction Company.

(Endorsed:) Filed February 6th, 1899. Southard Hoffman, clerk. By W. B Beaizley, deputy clerk.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Replication.

This replicant, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendants and respondents S. Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, E. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcona, D. Cemsangla, G. Gereghino, V. Chisossi, L. Chivighino, F. Compe, L. Consigla, P. Coestante, G.
126 Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dendera, E. Erigero, D. Esposto, M. Fidmo, A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicenti, F. Lanteri, C. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Motini, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Noce, J. Paganini, G. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Serivant, R. Stefano, A. Tisconia, M. Tripe, G. Tuierle, G. P. Turri, Giuseppe Arate, Luigi Brasetto, Giovanni Caniecia, Giuseppe Censigliere, Antonio Campi, Antonio Cuneo, Giovanni Cagezzio, Luigi Cararo, Luigi Ceraghino, Vincinzo Chiesse, Antonio Camicia, Giovanni Cesta, Ginglio Demartini, Paolo Demartini, Angelo Devincenzi, Antonio Delucchi, Bartolomeo Devincenzi, Antonio Dendereo, Emiglio Devincenzi, Domenico Delucchi, G. B. Espesto, Luigi Figeni, Abramo Feretti, G. B. Foppiano, Angelo Ferrari, Giovanni Figeni, Luigi Figeni, Francesco Fraviga, Giovanni Firenze, Antonio Lucchitti, Pietro Leonardini, Giovanni Melinari, Eluro Marini, Firpe Michele, Vitterio Muzio, Giacome Muzion, G. B. Mendani, Luigi Muzio, Agostine Muzio, Pietro Mesante,

Michele Nave, Domenico Picitti, Domenico Paganini, Luigi Peggi, Andrea Pedesta, Giovanni Pisigeni, Giuseppe Quierette, Luigi Rappo, Francesco Ratto, and Antonio Tescioma, for replication
127 thereunto, saith, that it, this repliant, doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants and respondents, and that the answer of the said defendants and respondents is very uncertain, evasive, and insufficient in law, to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matter- and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

PIERSON & MITCHELL,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of California, City and County of San Francisco, } ss:

L. R. Ellert, being duly sworn, deposes and says: That he is an officer, to wit; the president of the complainant corporation; that he has read the foregoing replication to the answer of the therein enumerated defendants and respondents, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true.

L. R. ELLERT.

128 Subscribed and sworn to before me this 4th day of February, 1899.

[SEAL.] EUGENE W. LEVY,
Notary Public in and for the City and County of San Francisco, State of California.

Service of within replication is hereby admitted this 6th day of February, 1899.

PAGE, McCUTCHEN & EELLS,
Solicitors for Respondents Other than The California Reduction Company.

(Endorsed:) Filed February 6th, 1899. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

At a stated term, to wit, the March term, A. D. 1899, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-

room in the city and county of San Francisco, on Thursday, the 25th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William W. Morrow, circuit judge.

SANITARY REDUCTION WORKS OF SAN FRANCISCO
vs.
CALIFORNIA REDUCTION COMPANY ET AL. } No. 12714.

Order Granting Application for Injunction *Pendente Lite*.

The order to show cause why an injunction *pendente lite* should not issue as prayed in the complaint herein, heretofore heard
129 and submitted to the court for consideration and decision, having been fully considered, and the opinion of the court having been this day filed, it was ordered that the application for injunction *pendente lite* be, and the same hereby is, granted. Further, it was ordered that the hearing on amount of bond to be filed be continued to 10 o'clock a. m. to-morrow.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit. In Equity.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Marshal's Return to Injunction.

United States Marshal's Partial Return of Service of the Provisional Injunction Issued in the Above Entitled Action on May 29th, 1899.

I hereby return that I have served the provisional injunction issued in the above-entitled action on the 29th day of May, 1899, by personally delivering a copy thereof to, and leaving said copy with, each of the respondents hereinafter named, upon the dates and at the places hereinafter respect*fully* set forth, as follows:

On the first day of July, 1899, at the county of San Mateo, upon E. Devincenzi, otherwise known as Emilio Devincenzi (driv-
130 ing garbage wagon bearing license number 139); upon driver of garbage wagon bearing license No. 13, who gave the name of L. Ferrari; upon driver of wagon bearing license number 89 (who refused to give his name); Giovanni Figoni (driving garbage wagon bearing license number 143), and at the same time delivered a copy of said writ to the helper on said last-named wagon; J. Devincenzi, otherwise known as Giovanni Devicenzi (driving garbage wagon bearing license number 183); driver of garbage wagon

bearing license number 81, who gave the name of Joe Demartini, and the driver of garbage wagon bearing license number 16, who refused to give his name or the name of the owner of said wagon.

On the third day of July, 1899, in said county of San Mateo, upon the driver of garbage wagon bearing license number 142, who gave his name as Francesco Figoni; C. Carcona, named herein C. S. Carcona, sometimes called C. Arconi (driving garbage wagon bearing license number 79), and at the same time delivered a copy of said writ to the helper upon said last-named wagon, who refused to give his name; upon the driver of garbage wagon bearing license number 28, who gave the name of Angelo Firpop; upon the driver of garbage wagon bearing license number 132, who refused to give his name; driver of garbage wagon bearing license number 24, who refused to give his name or the name of the owner.

On said last named date at the city and county of San Francisco, upon driver of garbage wagon bearing license number 165, who gave the name of Gabriel Foppiano; J. Rossi, sometimes known as Carlo Rossi (driving garbage wagon bearing license number 92), and at the same time delivered a copy of said writ to the helper on said last named wagon, who gave the name of M. Epprura;

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On the fifth day of July, 1899, at said city and county of San Francisco, upon driver (who refused to give his name) of garbage wagon bearing license number 82).

On said fifth day of July, 1899, at the county of San Mateo, upon P. Devincenzi (driving garbage wagon bearing license number 181); A. Devincenzi, otherwise known as Antonio Devincenzi (driving garbage wagon bearing license number 180); and upon the driver of garbage wagon bearing license number 8, who refused to give his name.

On said last named date, at the city and county of San Francisco, aforesaid, upon J. Paganini (driving garbage wagon bearing license number 93).

On the sixth day of July, 1899, at the city and county of San Francisco, aforesaid upon M. Connesita (driving garbage wagon bearing license number 154); A. Brandi, sometimes called A. Branchi (driving garbage wagon bearing license number 124), and at the same time delivered a copy of said writ to the helper upon said last named wagon, who refused to give his name; G. Costa (driving garbage wagon bearing license number 76), and at the same time delivered a copy of said writ to the helper upon said last named wagon, who refused to give his name; G. Semona, sometimes called G. Semona, and sometimes called Sluchenetti S. Semenza (driving garbage wagon bearing license number 71), and at the same time delivered a copy of said writ to the helper on said last named wagon, who gave the name of John Leuchonetti;

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upon the driver of garbage wagon bearing license number 47, who gave the name of Joe Demartini; upon L. Figoni, sometimes known as Luigi Figoni (driving garbage wagon bearing

license number 22); Angelo Devincenzi (driving garbage wagon bearing license number 87); D. Arkillo (driving garbage wagon bearing license number 111); F. Bargoglotti (driving wagon bearing license number 121); J. Devincenzi, otherwise known as Giuseppi Devincenzi (driving garbage wagon bearing license number 147); F. Fraviga (driving garbage wagon bearing license number 162); upon the driver of garbage wagon bearing license number 163, who said his name was L. Merlo and who claimed to be the owner of said wagon; upon A. Luchetti (driving garbage wagon bearing license number 67); A. Delucchi, sometimes called A. Deluci (driving garbage wagon bearing license number 29); upon the driver of garbage wagon bearing license number 77, who claimed his name was A. Musante; Giovanni Firenze (driving garbage wagon bearing license number 95); A. Ferrari, otherwise known as Luigi Ferrari (driving garbage wagon bearing license number 110); A. Renoti, otherwise known as Giovanni Renati, (driving garbage wagon bearing license number 90); J. Devincenzi, otherwise known as Giuseppe or Giovanni Devincenzi (driving garbage wagon bearing license number 174); G. P. Turri, sometimes called G. B. Turri (driving garbage wagon bearing license number 88); upon the driver of garbage wagon bearing license number 130, who refused to give his name but said the owner of the wagon was F. Ratto; upon the driver of garbage wagon bearing license number 162, who refused to give his
133 name but said the owner of the wagon was Frienze; upon P. De Martini, otherwise known as Davide De Martine (driving garbage wagon bearing license number 106); upon the driver of garbage wagon bearing license number 113, who stated that his name was De Martini; the driver of garbage wagon bearing license number 31, who refused to give his name; F. Rocco, otherwise known as Felice Roccha (driving garbage wagon bearing license number 19); M. Giovanni (driving garbage wagon bearing license number 149); P. Segale (driving garbage wagon bearing license number 65); J. Rossi, sometimes known as Carlo Rossi (driving garbage wagon bearing license number 17); upon the driver of garbage wagon bearing license number 25, who refused to give his name but stated that he was the owner of said wagon; upon A. Podesta, sometimes called A. Podisti (driving garbage wagon bearing license number 144); upon the driver of garbage wagon bearing license number 99, who stated that his name was F. A. Mesante or Musante, and that P. Mesante or Musante was the owner of said wagon; upon P. Mornilli, sometimes called P. Moinelli (driving garbage wagon bearing license number 94); upon the driver of garbage wagon bearing license number 48, who gave the name of Andrew Ardino; upon the driver of garbage wagon bearing license number 27, who gave the name of Loui Lucci and said that the owner of said wagon was Mrs. Jennie Cozza; upon G. Runcallo, sometimes called Guiseppe Runcello (driving garbage wagon bearing license number 104); F. Picolo, sometimes called F. Picollo,

and sometimes called Francesco Piccolo (driving garbage
134 wagon bearing license number 58); driver of garbage wagon bearing license number 155); who gave the name of Luigi Noce; upon the driver of garbage wagon bearing license number 101, who refused to give his name; upon the driver of garbage wagon bearing license number 69, who refused to give his name; upon the driver of garbage wagon bearing license number 26, who stated that his name was Paolo Barozzi and that the owner of the wagon was Angelo Rustici; upon the driver of garbage wagon bearing license number 45, who refused to give his name; upon the driver of garbage wagon bearing license number 136, who gave the name of G. Bertini; upon the driver of garbage wagon bearing license number 108, who refused to give his name or the name of the owner; upon the driver of garbage wagon bearing license number 100, who gave his name as L. Cereghino, Jr.; upon the driver of garbage wagon bearing license number 60, who stated that he was the owner of the wagon but refused to give his name; upon P. Muzio (driving garbage wagon bearing license number 120); G. Cereghino, sometimes called G. Cereghini (driving garbage wagon bearing license number 148); M. Tripo, otherwise known as Michele Firpe, and sometimes called Luigi Firpo (driving garbage wagon bearing license number 30); G. B. Molinan, sometimes called Guiseppe Molinari, and sometimes called G. B. Molinanni, and sometimes called G. B. Molinari, (driving garbage wagon bearing license number 35); L. Consigla, sometimes called L. Cosiclo (driving garbage wagon bearing license number 50); D. Calemarliar (driving garbage wagon bearing license number 15); J. Devincenzi, otherwise known as Giovanni Devincenzi (driving
garbage wagon bearing license number 107); C. Lercari,
135 sometimes called Carlo Lercari (driving garbage wagon bearing license number 55); V. Gattle, otherwise known as Lorenzo Gotelli (driving garbage wagon bearing license number 157); D. Bargoglotti, sometimes known as D. Bargoglioti (driving garbage wagon bearing license number 122); F. Jicento (driving garbage wagon bearing license number 159); upon the driver of garbage wagon bearing license number 133 who refused to give his name or the name of the owner; upon the driver of garbage wagon bearing license number 118, who refused to give his name or the name of the owner; upon C. Basazzi (driving garbage wagon bearing license number 125); D. Esposto, sometimes called Domenico Esposto (driving garbage wagon bearing license number 172); M. Cuneo, otherwise known as Michele Cuneo (driving garbage wagon bearing license number 36).

On the twenty-eighth day of July, 1899; at said county of San Mateo, upon the driver of garbage wagon bearing license number 37; who gave his name as G. Campi; and

On the twenty-ninth day of July, 1899, at the city and county of San Francisco; aforesaid upon R. T. Harding, of the firm of Page, McCutchen & Eells, attorneys for respondents herein.

In witness whereof, I have hereto set my hand this third day of August, 1899.

JOHN H. SHINE,
United States Marshal in and for the
Northern District of California,
By H. M. MOFFITT,
Office Deputy.

136 In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit. In Equity.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Provisional Injunction.

The President of the United States to The California Reduction Company (a corporation), D. Arkillo, G. Arata, S. Antonio, A. Bachigalupi, A. Baciocco (sometimes called A. Bacionio), D. Bargoglotti (sometimes known as D. Bargoglioti), F. Bargoglotti, C. Basazzi, J. Biasotti, F. Boiselli (sometimes called A. Boicelli), A. Brandi (sometimes called A. Branchi), L. Brasetto, A. Brassi, G. Cagezzio, D. Calemarliar, A. Camicia (sometimes called G. Caniecia), A. Campi, L. Cararo, A. Caporance, C. B. Carcona (sometimes called C. Arconi), C. A. Carlson, D. Cesmangla, G. Cereghino (sometimes called G. Cereghini), L. Cereghino, V. Chiossi, L. Chivighino, M. Connesita, F. Compe, L. Consigla (sometimes
137 called L. Cosielo), G. Consigliere (sometimes called G. Conselio), P. Cosstante, G. Costa, Mrs. J. Cozza, L. Cumisco, A. Cuneo, M. Cuneo (otherwise known as Michele Cuneo), A. Delucchi (sometimes called A. Deluci), D. Delucchi, P. De Luci, D. De Martini (otherwise known as Davide De Martini), G. Demartini, P. Demartini, Angelo Devincenzi, A. Devincenzi (otherwise known as Antonio Devincenzi), B. Devincenzi, E. Devincenzi (otherwise known as Emilio Devincenzi), J. Devincenzi (otherwise known as Giovanni Devincenzi) J. Devicenzi (otherwise known as Guiseppe Devincenzi), P. Devincenzi, A. Dondera, E. Erigero, D. Esposto (sometimes called Domenico Esposto), G. B. Espesto, A. Feretti (sometimes called Andrea Popetta and sometimes called Reppetto Feretti), A. Ferrari (otherwise known as Luigi Ferrari), M. Fidmo, A. Figoni (otherwise known as Antonio Figoni), Giovanni Figoni, L. Figoni (sometimes known as Luigi Figoni), Giovanni Firenze, L. Firpo, (otherwise known as Luigi Firpo), G. B. Foppiano (sometimes called Francesco Foppiano), M. Foppiano (sometimes called G. Foppiano), F. Fraviga, D. Frensse (otherwise known as Domenico Sirenze), D. Frienzi (otherwise known as D. Firenzzi), J. Garbino (otherwise known as G. Gorboriuo), S. Gardelli, V. Gattle

(otherwise known as Lorenzo Gotelli), G. Gerolamo (otherwise known as G. Geiolano), M. Giovanni, F. Gusto, F. Jicento, F. Lauteri (sometimes called Felice Lauteri), P. Leonardini, C. Lercari (sometimes called Carlo Lercari), A. Lucchetti (sometimes called Giovanni Luchetti), P. Luigi (sometimes called E. Pietati and sometimes called Luigi Pietati), B. Manliano (sometimes called V. Manliano), E. Marini, P. Mesante (sometimes called V. Musante), G. B. Mendani, F. Michele, G. B. Molinan (sometimes called Guiseppe Molinari, and sometimes called G. G. Molinanni, and sometimes called G. B. Molinari), P. Mornilli (sometimes called P. Moinelli), E. Moroni (sometimes called E. Motini and sometimes called Moro Morino), A. C. Mosoni (sometimes called Antonio Mosconi), D. Mozio, A. Muzio, C. Muzio, G. Muzio, J. Muzio, L. Muzio (sometimes known as L. Merzio), P. Muzio, V. Muzio, M. Nave (sometimes called Michele Nave and sometimes called M. Nava), John Nonce (sometimes known as John Noce and sometimes known as Giovanni Noce), L. Poggi, A. Podesti (sometimes called A. Podisti), Andrea Podesta (sometimes called A. Podesti), G. Pisigoni (sometimes called and known as Pisigoni & Co.), F. Picolo (sometimes called F. Picolo and sometimes called Francesco Piccolo), D. Picitti, C. Pietranove (sometimes known and called Cesare Pietronave), B. Pasqualetti (sometimes known as B. Pasqualiti), J. Paganini, D. Paganini, G. Paganini, (sometimes called Giovanni Paganini), G. Tenerolo (sometimes known as Giovanni Quierolo and sometimes known as Joe Querrele), P. Rustici (sometimes known as Paolo Rustici, G. Runcallo (sometimes called Guiseppe Runcello), J. Rossi (sometimes known as Carlo Rossi), F. Rocco (otherwise known as Felice Roccha), A. Renoti (otherwise known as Giovanni Renati), L. Ratto (sometimes called L. Raffo), G. B. Ratto (sometimes called G. B. Raffo), F. Ratto, L. Rappo, R. Stefano, D. Scrivani, G. Simenetti, G. Semoza (sometimes called G. Semonza, and sometimes called Sluchenetti S. Semenza), P. Segale, G. P. Turri (sometimes called G. B. Turri), G. Tuierolo, M. Tripo (otherwise known as Michele Firpo, and sometimes called Luigi Firpo), F. Traviga (otherwise known as F. Travega), A. Tisconia (otherwise known as A. Tesconia), Greeting:

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139

Whereas, on the 26th day of May, A. D. 1899, an order was duly made and entered in the above-entitled action by the above-entitled court, directing that upon the filing by the complainant of a good and sufficient undertaking in the sum of seventeen thousand five hundred ($17,500) dollars, with surety to be approved by the clerk, a provisional injunction issue out of and under the seal of the court directed to and against you, The California Reduction Company (a corporation), D. Arkillo, G. Arata, S. Antonio, A. Bacigalupi, A. Baciocco (sometimes called A. Bacionio), D. Bargoglotti (sometimes known as D. Bargoglioti), F. Bargoglotti, C. Basazzi, J. Biasotti, F. Boiselli (sometimes called A. Boicelli), A. Brandi (sometimes called A. Branchi), L.

Brasetto, A. Brassi, G. Cagezzio, D. Calemarliar, A. Camicia (sometimes called G. Caniecia), A. Campi, L. Carcaro, A. Caporance, C. B. Carcona (sometimes called C. Arconi), C. A. Carlson, D.
140 Cesmangla, G. Cereghino (sometimes called G. Cereghini), L. Cereghino, V. Chiossi, L. Chivighino, M. Connesita, F. Compe, L. Consigla (sometimes called L. Cosielo), G. Consigliere (sometimes called G. Conselio), P. Coestanta, G. Costa, Mrs. J. Cozza, L. Cumisco, A. Cuneo, M. Cuneo (otherwise known as Michele Cuneo), A. Delucchi (sometimes called A. Deluci), D. Delucchi, P. De Luci, D. De Martini (otherwise known as Davide De Martini), G. Demartini, P. Demartini, Angelo Devincenzi, A. Devincenzi (otherwise known as Antonio Devincenzi), B. Devincenzi, E. Devincenzi (otherwise known as Emilio Devincenzi), J. Devincenzi (otherwise known as Giovani Devincenzi), J. Divincenzi (otherwise known as Guiseppe Devincenzi), P. Devincenzi, A. Dondera, E. Erigero, D. Esposto (sometimes called Domenico Esposto), G. B. Espesto, A. Feretti (sometimes called Andrea Popetta, and sometimes called Reppetto Feretti), A. Ferrari (otherwise known as Luigi Ferrari), M. Fidmo, A. Figoni (otherwise known as Antonio Figoni), Giovanni Figoni, L. Figoni (sometimes known as Luigi Figoni), Giovanni Firenze, L. Firpo (otherwise known as Luigi Firpo), G. B. Foppiano (sometimes called Francesco Foppiano), M. Foppiano (sometimes called G. Foppiano), F. Fraviga, D. Frensse (otherwise known as Domenico Sirenze), D. Frienzi (otherwise known as D. Firenzzi), J. Garbino (otherwise known as G. Gorborino), S. Gardelli, V. Gattle (otherwise known as Lorenzo Gotelli), G. Gerolamo (otherwise known as G. Geiolano), M. Giovanni, F. Gusto, F. Jicento, F. Lauteri (sometimes called Felice Lauteri), P. Leonardini, C. Lercari (sometimes
141 called Carlo Lercari), A. Lucchetti (sometimes called Giovanni Lucchetti), P. Luigi (sometimes called E. Pietati and sometimes called Luigi Pietati), B. Manliano (sometimes called V. Manliano), E. Marini, P. Mesante (sometimes called V. Musante), G. B. Mendani, F. Michele, G. B. Molinan (sometimes called Guiseppe Molinari, and sometimes callad G. B. Molinanni, and sometimes called G. B. Molinari), P. Mornilli (sometimes called P. Moinelli), E. Moroni (sometimes called E. Motini and sometimes cal-ed Moro Morino), A. C. Mosoni (sometimes called Antonio Mosconi), D. Muzio, A. Muzio, C. Muzio, G. Muzio, J. Muzio, L. Muzio (sometimes known as L. Merzio), P. Muzio, V. Muzio, M. Nave (sometimes called Michele Nave and sometimes called M. Nava), John Nonce (sometimes known as John Noce and sometimes known as Giovanni Noce), L. Poggi, A. Podesti (sometimes called A. Podisti), Andrea Podesta (sometimes called A. Podesti), G. Pisigoni (sometimes called and known as Pisigoni & Co.), F. Picolo (sometimes called F. Picollo and sometimes called Francesco Piccolo), D. Picitti, C. Pietranove (sometimes known and called Cesare Pietronave), B. Pasqualetti (sometimes known as B. Pasqualiti), J. Paganini, D. Paganini, G. Paganini (sometimes called Giovanni Paganini), G. Tenerolo (sometimes known as Giovanni Quierolo and sometimes known as Joe

Querrele), P. Rustici (sometimes known as Paolo Rustici), G. Runcallo (sometimes called Guiseppe Runcello), J. Rossi (sometimes known as Carlo Rossi), F. Rocco (otherwise known as Felice Rocchi), A. Renoti (otherwise known as Giovanni Renati), L. Ratto
142 (sometimes called L. Raffo), G. B. Ratto (sometimes called G. B. Raffo), F. Ratto, L. Rappo, R. Stefano, D. Scrivani, G. Simenetti; G. Semoza (sometimes called G. Semonza and sometimes called Sluchenetti S. Semenza), P. Segale, G. P. Turri (sometimes called G. B. Turri), G. Tuierolo, M. Tripo (otherwise known as Michele Firpo and sometimes called Luigi Firpo), F. Traviga (otherwise known as F. Travega), A. Tisconia (otherwise known as A. Teconia), enjoining and restraining you, your agents, servants and workmen, until the further order of the court, from the commission of certain acts as prayed for in the bill of complaint herein and hereinafter mentioned.

And whereas, said complainant has furnished and filed said undertaking, which has been approved as directed:

Now, therefore, we do strictly command and enjoin you, the said The California Reduction Company (a corporation), D. Arkillo, G. Arata, S. Antonio, A. Bacigalupi, A. Baciocco (sometimes called A. Bacionio), D. Bargoglotti (sometimes known as D. Bargoglioti), F. Bargoglotti, C. Basazzi, J. Biasotti, F. Boiselli (sometimes called A. Boicelli), A. Brandi (sometimes called A Branchi), L. Brasetto, A. Brassi, G. Cagezzio, D. Calemarliar, A. Camicia (sometimes called G. Caniecia), A. Campi, L. Cararo, A. Caporance, C. B. Carcone (sometimes called C. Arconi), C. A. Carlson, D. Cesmangla, G. Cereghino (sometimes called G. Cereghini), L. Cereghino, V. Chiossi, L. Chivighino, M. Connesita, F. Compe, L. Consigla (sometimes called L. Cosielo), G. Consigliere (sometimes
143 called G. Conselio), P. Cosstante, G. Costa, Mrs. J. Cozza, L. Cumisco, A. Cuneo, M. Cuneo (otherwise known as Michele Cuneo), A. Delucchi (sometimes called A. Deluci), D. Delucchi, P. De Luci, D. De Martini (otherwise known as Davide De Martini), G. Demartini, P. Demartini, Angelo Devincenzi, A. Devincenzi (otherwise known as Antonio Devincenzi), B. Devincenzi, E. Devincenzi (otherwise known as Emilio Devencenzi), J. Devincenzi (otherwise known as Giovanni Devincenzi), J. Devincenzi (otherwise known as Guiseppe Devincenzi), P. Devincenzi, A. Dondera, E. Erigero, D. Esposto (sometimes called Domenico Esposto), G. B. Espesto, A. Feretti (sometimes called Andrea Popetta and sometimes cal-ed Repetto Feretti), A. Ferrari (otherwise known as Luigi Ferrari), M. Fidmo, A. Figoni (otherwise known as Antonio Figoni), Giovanni Figoni, L. Figoni (sometimes known as Luigi Figoni), Giovanni Firenze, L. Firpo (otherwise known as Luigi Firpo), G. B. Foppiano (sometimes called Francesco Foppiano), M. Foppiano sometimes called G. Foppiano, F. Fraviga, D. Frenase (otherwise known as Domenico Sirenze), D. Frienzi (otherwise known as D. Firenzzi), J. Garbino (otherwise known as G. Gorborino, S. Gardelli, V. Gattle (otherwise known as Lorenzo Gotelli), G. Gerolamo (other-

wise known as G. Geiolano), M. Giovanni, F. Gusto, F. Jicento, F. Lauteri (sometimes called Felice Lauteri), P. Leonardini, C. Lercari (sometimes called Carlo Lercari), A. Lucchetti (sometimes called Giovanni Luchetti), P. Luigi (sometimes called E. Pietati and sometimes called Luigi Pietati), B. Manliano (sometimes called V.
144 Manliano), E. Marini, P. Mesante (sometimes called V. Musante), G. B. Mendani, F. Michele, G. B. Molinan (sometimes called Guiseppe Molinari, and sometimes called G. B. Molinanni, and sometimes called G. B. Molinari), P. Mornilli (sometimes called P. Moinelli), E. Moroni (sometimes called E. Motini and sometimes called Moro Morino), A. C. Mosoni (sometimes called Antonio Mosconi), D. Muzio, A. Muzio, C. Muzio, G. Muzio, J. Muzio, L. Muzio (sometimes known as L. Merzio), P. Muzio, V. Muzio, M. Nave (sometimes called Michele Nave and sometimes called M. Nava), John Nonce (sometimes known as John Noce and sometimes known as Giovanni Noce), L. Poggi, A. Podesti (sometimes called A. Podisti), Andrea Podesta (sometimes called A. Podesti), G. Pisigoni (sometimes called and known as Pisigoni & Co.), F. Picolo (sometimes called F. Picollo and sometimes called Francesco Piccolo), D. Picitti, C. Pietranove (sometimes known and called Cesare Pietronave), B. Pasqualetti (sometimes known as B. Pasqualiti), J. Paganini, D. Pagauini, G. Paganini (sometimes called Giovanni Paganini), G. Tenerolo (sometimes known as Giovanni Quierolo and sometimes known as Joe Querele), P. Rustici (sometimes known as Paolo Rustici), G. Runcallo (sometimes called Guiseppe Runcello), J. Rossi (sometimes known as Carlo Rossi), F. Rocco (otherwise known as Felice Rocca), A. Renoti (otherwise known as Giovanni Renati), L. Ratto (sometimes called L. Raffo), G. B. Ratto (sometimes called G. B. Raffo), F. Ratto, L. Rappo, R. Stefano, D. Scrivani, G. Simenetti, G. Semoza (sometimes called G. Semonza,
145 and sometimes called Sluchenetti S. Semenza) P. Segale, G. P. Turri (sometimes called G. B. Turri), G. Tuierolo, M. Tripo (otherwise known as Michele Firpe and sometimes called Luigi Firpo), F. Traviga (otherwise known as F. Travega), A. Tisconia (otherwise known as A. Tesconia), your agents, servants and workmen, that until the further order of this court you do absolutely desist and refrain from directly or indirectly removing from the city and county of San Francisco, State of California, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones, and other like matter, dead animals, putrid vegetable matter, or such fish, flesh, and food as may be condemned by the board of health as unfit for human food, as specified in order No. 2965 and in order No. 12 (second series) of the board of supervisors of the city and county of San Francisco, State of California, set forth in the bill of complaint herein, and from depositing or dumping at any other place in said city and county of San Francisco save and except at the works, buildings, and crematories of the complainant herein, situated on

the block of land bounded by Rhode Island, Alameda, De Haro and Fifteenth streets in said city and county of San Francisco, any of the house refuse or other materials hereinbefore described, during the life and term of the contract and franchise belonging to the complainant herein, as alleged in the bill of complaint herein, and from obstructing, hindering or interfering with said complainant in the delivery to it, or in the incineration and cremation by it, of any of the house refuse and other materials mentioned and described in said orders and ordinances and in the bill of complaint herein, and from diverting from the complainant any of said house refuse or other materials, and from infringing in any manner upon the rights, privileges and franchise secured to said complainant by the aforesaid orders and ordinances, and from interfering with said complainant in the performance of any of its duties under said orders and ordinances, and the foregoing we do strictly command and enjoin upon you under the penalty of the law in such case made and provided.

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Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 29th day of May, in the year of our Lord one thousand eight hundred and ninety-nine, and in the year of our Independence the one hundred and twenty-third.

SOUTHARD HOFFMAN, Clerk.

[Seal of U. S. Circuit Court.]

(Endorsed:) Filed August 8, 1899. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

147 In the United States Circuit Court, Northern District of California, Ninth Circuit.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL.

Motion to Dismiss Cause as to Certain Defendants.

Now comes Joseph Consiglea, Luigi Ferrari, and Davide De Martini, and Francisco Figone and moves the court to dismiss said action as against them on the grounds that said court has not and never had any jurisdiction on the persons of said defendants or either of them or of this cause of action as against them. And for grounds of said motion they allege that they are citizens of the United States of America and were such citizens on the day on which said action was commenced and for a long time prior thereto. That for more than two years prior to the commencement of said action they were duly naturalized in the superior court of the city and county of San Francisco, State of California, and a proper cer-

tificate of naturalization was then and there issued to them under the seal of said court, which said certificates they are ready to exhibit to this honorable court.

Wherefore they pray the judgment of this court that said suit be dismissed as to them.

A. P. VAN DUZER,
Attorney and Solicitor for said Respondents.

148 STATE OF CALIFORNIA, City and County of San Francisco, } ss:

Davide De Martini, being duly sworn, deposes and says: That he is a respondent in the above entitled action; that he has heard read the foregoing motion and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and as to those matters, that he believes it to be true.

D. DEMARTINI.

Subscribed and sworn to before me, this 4th day of August, 1899.
[SEAL.] CHAS. W. SMITH,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed August 7, 1899. Southard Hoffman, clerk.

149 In the United States Circuit Court, Northern District of California, Ninth Circuit.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO
vs.
THE CALIFORNIA REDUCTION COMPANY.

Motion to Dismiss Cause as to Certain Defendants.

Please take notice that on Monday, the 14th day of August, 1899, at ten o'clock of said day, on the opening of said court, Joseph [illegible], Luigi [illegible], Davide De Martini and [illegible] will move the court to dismiss said action as against them on the ground that the court has no jurisdiction of the persons of said defendants or either of them or of the cause of action as against them, the said respondents being citizens of the United States of America, and were such citizens at the time said action was commenced and for a long time prior thereto. Said motion will be made on the affidavits of said respondents served herewith and the papers in said case and the certificates of naturalization issued to them.

Yours very respectfully, A. P. VAN DUZER,
Attorney for said Respondents Above Mentioned.

To Messrs. Pierson & Mitchell, attorneys for complainant.

(Endorsed:) Filed August 7, 1899. Southard Hoffman, clerk.

150 At a stated term, to wit, the July term, A. D. 1899, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the courtroom in the city and county of San Francisco, on Monday, the 4th day of September, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable James H. Beatty, district judge, district of Idaho, designated to hold, and holding circuit court for the northern district of California.

SANITARY REDUCTION WORKS
vs.
CALIFORNIA REDUCTION COMPANY ET AL.

Order Granting Motion to Dismiss as to Defendant D. De Martini, etc.

The motion of defendants Joseph Consiglea, *et al.*, to dismiss this action as to them, heretofore heard and submitted, having been fully considered, and the oral opinion of the court having been delivered, it is, in accordance therewith ordered that said motion be and hereby is granted as to the defendant D. De Martini, and denied as to all other defendants in said motion named.

151 At a stated term, to wit, the November term, A. D. 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Monday, the 23d day of December, in the year of our Lord one thousand nine hundred and one.

Present: The Honorable William W. Morrow, circuit judge.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL. } No. 12714.

Order for Final Decree.

This cause heretofore heard and submitted to the court for consideration and decision, having been now fully considered, it is by the court—

Ordered that a final decree be filed and entered herein in favor of complainant, and against defendants, in accordance with the prayer of complainant's bill of complaint, and for costs.

152 In the [illegible] Court of the United States, Ninth Circuit, Northern District of California.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents. } No. 12714.

Enrollment.

The complainant filed its bill of complaint herein on the 19th day of December, 1898, which is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued, returnable on the 6th day of February, A. D. 1899, which is hereto annexed, and an order to show cause and restraining order was thereupon issued, and is hereto annexed.

The respondent, The California Reduction Company, appeared herein on the 20th day of December, 1898, by Black & Leaming, Esqs., its solicitors.

On the 31st day of December, 1898, the answer of the California Reduction Company was filed herein, which is hereto annexed.

On the 3d day of January, 1899, a rule dismissing bill as
153 to defendant California Reduction Company, and dismissing the cause was entered herein, a copy of which rule is hereto annexed.

On the 3d day of January, 1899, a replication to the answer of the California Reduction Company was filed herein and is hereto annexed.

On the 4th day of January, 1899, an order to show cause why rule dismissing bill should not be set aside, etc., was filed herein, and on the same day an order was made and entered vacating rule dismissing bill, with leave to complainant to withdraw the replication filed January 3d, 1899, etc., a copy of which order is hereto annexed.

On the 7th day of January, 1899, the appearance of the defendants, S. Antonio *et al.*, was entered herein by Garret W. McEnerney and Page, McCutchen & Eells, Esqs., their solicitors.

On the 7th day of January, 1899, the joint and several answer of the defendants, except defendant The California Reduction Company, was filed herein and is hereto annexed.

On the 6th day of February, 1899, a replication to the answer of defendant, The California Reduction Company, and a replication to the answer of the defendants, S. Antonio *et al.*, were filed herein and are hereto annexed.

On the 25th day of May, 1899, an order granting complainant's application for injunction *pendente lite* was made and entered herein in a copy of which order is hereto annexed.

154 On the 29th day of May, 1899, a provisional injunction was issued herein and is hereto annexed, together with the marshal's return endorsed thereon.

On the 7th day of August, 1899, a motion and notice of motion to dismiss as to defendants Joseph Consiglea *et al.* were filed herein and are hereto annexed.

On the 4th day of September, 1899, an order granting the motion to dismiss as to defendant D. De Martini, and denying motion as to others, was made and entered herein, a copy of which order is hereto annexed.

On the 23d day of December, 1901, an order for final decree was made and entered herein, a copy of which order is hereto annexed. Thereafter a final decree was signed, filed and entered herein, in the words and figures following, viz:

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit. In Equity.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Final Decree.

This cause came on for final hearing at the November term of this court, A. D. one thousand nine hundred, and was argued by counsel for complainants and respondents and submitted to the court
155 for its decision; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz:

The provisional injunction heretofore, on the twenty-ninth day of May, A. D. one thousand eight hundred and ninety-nine, issued herein against the respondents hereinafter named is hereby made perpetual and said respondents, The California Reduction Company (a corporation), S. Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcona, D. Cemsangla, G. Cereghino, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Costante, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo, A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, G. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Motini, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Noce, J. Paganini, G. Paganini, B. Pasqualetti, F. Picollo, G. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano,

A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, Giuseppe Arata, sued herein as First Italian, Luigi Brasetto, sued herein as Second Italian, Giovanni Caniecia, sued herein as Third Italian, Giuseppe Censigliere, sued herein as Fourth Italian, Antonio Campi, sued herein as Fifth Italian, Antonio Cuneo, sued herein as Sixth Italian, Giovanni
156 Cagezzio, sued herein as Seventh Italian, Luigi Cararo, sued herein as Eighth Italian, Luigi Cereghino, sued herein as Ninth Italian, Vincinzo Chiosso, sued herein as Tenth Italian, Antonio Camacia, sued herein as Eleventh Italian, Giovanni Cesta, sued herein as Twelfth Italian, Ginglio Demartini, sued herein as Thirteenth Italian, Paolo Demartini, sued herein as Fourteenth Italian, Angelo Devincenzi, sued herein as Fifteenth Italian, Antonio Delucchi, sued herein as Sixteenth Italian, Bartolomeo Devincinzi sued herein as Seventeenth Italian, Antonio Dendero, sued herein as Eighteenth Italian, Emiglio Devincenzi, sued herein as Nineteenth Italian, Domenico Delucchi sued herein as Twentieth Italian, G. B. Espesto, sued herein as Twenty-first Italian, Luigi Figeni, sued herein as Twenty-second Italian, Abramo Feretti, sued herein as Twenty-third Italian, G. B. Feppiano, sued herein as Twenty-fourth Italian, Angelo Ferrari, sued herein as Twenty-fifth Italian, Giovanni Figeni, sued herein as Twenty-sixth Italian, Luigi Figeni, sued herein as Twenty-seventh Italian, Francesco Froviga, sued herein as Twenty-eighth Italian, Giovanni Firenze, sued herein as Twenty-ninth Italian, Antonio Lucchitti, sued herein as Thirtieth Italian, Pietro Leonardini, sued herein as Thirty-first Italian, Giovanni Melinari, sued herein as Thirty-second Italian, Eluro Marini, sued herein as Thirty-third Italian, Firpe Michele, sued herein as Thirty-fourth Italian, Vitterio Muzio, sued herein as Thirty-fifth Italian, Giacome Muzio, sued herein as Thirty-sixth Italian, G. B. Mendani, sued herein as Thirty-seventh Italian Luigi Muzio, sued herein as Thirty-eighth Italian, Agostine Muzio, sued herein as Thirty-
157 ninth Italian, Pietro Mesante sued herein as Fortieth Italian, Domenico Picitti, sued herein as Forty-second Italian, Michele Nave, sued herein as Forty-first Italian, Domenico Paganini, sued herein as Forty-third Italian, Luigi Peggi, sued herein as Forty-fourth Italian, Andrea Pedesta, sued herein as Forty-fifth Italian, Giovanni Pisigeni, sued herein as Forty-sixth Italian, Giuseppe Quieretto, sued herein as Forty-seventh Italian, Luigi Rappo, sued herein as Forty-eighth Italian, Francesco Ratto, sued herein as Forty-ninth Italian, Antonio Tescioma, sued herein as Fiftieth Italian, are, and each of them is, and their agents, representatives, servants and employees, and the agents, representatives, servants and employees of each of them, and all persons claiming or holding under or through them of either of them are hereby perpetually enjoined and restrained from directly or indirectly removing from the city and county of San Francisco, State of California, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, dead animals, putrid vegetable matter, or such fish, flesh or food as may be con-

demned by the board of health of said city and county as unfit for human food, as specified in order No. 2965, or in order No. 12 (second series) of the board of supervisors of said city and county of San Francisco, State of California, set forth in the bill of complaint herein, and from depositing or dumping at any other place in said city and county of San Francisco, save and except at the works, buildings and crematories of the complainant herein, in said city and county of San Francisco, any of the house refuse or other
158 materials hereinbefore described, during the life and term of the contract and franchise belonging to the complainant as alleged in the bill of complaint herein, and from obstructing, hindering, or in any way interfering with said complainant in the delivery of it, or in the incineration and cremation by it, of any of the house refuse or other materials mentioned and described in said orders and ordinances and in the bill of complaint herein, and from diverting from the complainant any of said house refuse or other materials and from infringing in any manner upon the rights, privileges or franchises secured to said complainant by the aforesaid orders or ordinances, and from interfering with said complainant in the performance of any of its duties under said orders or ordinances.

It is further ordered, adjudged and decreed that said complainant do have and recover of and from the said respondents herein its costs, charges and disbursements in this action, to be taxed in the usual manner by the clerk of this court, and that it have execution therefor.

Costs taxed at $—.

Dated, January 7th, 1902.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Filed and entered January 7th, 1902. Southard Hoffman, clerk.

159 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Memorandum of Costs and Disbursements.

Disbursements.

Marshal's fee	$495.60
Clerk's fees	208.50
Reporter's fees	271.40
Examiner's fees	40.00
Notary's fees (sundry affidavits used in said cause)	22.50
Total	$1038.00

UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, } ss:

John A. Percy, being duly sworn deposes and says: That he is one of the attorneys for the complainant in the above-entitled cause, and as such is better informed relative to the above costs and
160 disbursements than the said complainant. That the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

JOHN A. PERCY.

Subscribed and sworn to before me this 11th day of January, 1902.

[SEAL.] EUGENE W. LEVY,
Notary Public in and for the City and County of San Francisco, State of California.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Notice.

To the respondents herein and to Messrs. Page, McCutchen & Eells, Black & Leaming, and Garret W. McEnerney, their attorneys:

You will please take notice that o Monday, the 13th day of January, A. D. 1902, at the hour of te 'clock a. m., we will apply to the clerk of said court to have the within memorandum of
161 costs and disbursements taxed pursuant to the rule of said court in such cases made and provided.

PIERSON & MITCHELL,
WM. M. PIERSON,
JOHN A. PERCY,
Attorneys for Complainant.

Service of the within memorandum of costs and disbursements and receipt of a copy thereof acknowledged this 11th day January, A. D. 1902.

BLACK & LEAMING,
Attorneys for Respondent, The California Reduction Company.
GARRET W. McENERNEY,
PAGE, McCUTCHEN & EELLS,
Attorneys for All Respondents Other Than The Reduction Company.

(Endorsed:) Filed January 11th, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

Certificate to Enrollment.

Whereupon, said pleadings, subpœna, orders to show cause, restraining order, provisional injunction, motion, copies of orders, final decree, and a memorandum of taxed costs, are hereto annexed, said final decree being duly signed, filed and enrolled, pursuant to the practice of said circuit court.

Attest, etc.:

[SEAL.] SOUTHARD HOFFMAN, Clerk.
By W. B. BEAIZLEY, Deputy Clerk.

162 (Endorsed:) Enrolled papers. Filed January 7th, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.
} No. 12714.

Thursday, May 25, 1899.

Opinion.

On Order to Show Cause Why an Injunction *Pendente Lite* Should Not Issue.

William M. Pierson, and Charles L. Tilden, for complainant.
Alfred L. Black, for respondent California Reduction Company.
Garret W. McEnerney, R. T. Harding, and Mich. Mullaney, for respondents other than California Reduction Company.

MORROW, Circuit Judge:

This is an order to show cause why an injunction *pendente lite* should not issue.

Complainant's bill is brought to secure an injunction, restraining respondents from carrying away outside of the city and county of San Francisco certain garbage and other enumerated mate-
163 rials collected therein, of which complainant claims exclusive right to dispose, also the sum of twenty-five thousand dollars as damages for infringement of complainant's rights.

Complainant's bill alleges that it is a corporation duly organized under the laws of California, and that the respondent corporation is organized under the laws of Colorado, and that the other respond-

ents are liens, residents of the city and county of San Francisco; that a certain order known as "order No. 2965" was duly and finally passed, adopted and enacted by the board of supervisors of the city and county of San Francisco, on February 17, 1896, that another order known as "order No. 12" (second series), and one known as "resolution No. 903 (fourth series)," were also regularly enacted in order to carry out the provisions of "order No. 2965" the more effectively; that by virtue of "order No. 2965" a valid contract was entered into between the city and county of San Francisco and one F. E. Sharon, under the terms of which the said F. E. Sharon was to have the exclusive privilege, for the period of fifty years from February 17, 1896, of cremating and reducing garbage and other specified materials collected in the city and county of San Francisco, at a maximum charge of twenty cents per cubic yard, and the said F. E. Sharon, on his part, was to erect a crematory of the capacity of at least three hundred tons a day, to reduce the enumerated substances within twenty-four hours of their receipt, and in such a manner as to avoid the emission of noxious gases; that this contract was assigned by F. E. Sharon to complainant on September 18,
164 1896; that complainant has carried out the provisions of the contract, having erected a crematory at a cost exceeding two hundred thousand dollars, and notified the board of supervisors of its readiness to receive garbage for reduction, and that unless complainant can have the exclusive right of cremating and destroying the materials mentioned the contract and franchise so entered into will be rendered worthless; that complainant has faithfully discharged the obligations imposed upon it by the contract; that the respondents other than the respondent corporation have hindered complainant in carrying out its contract by diverting large quantities of garbage and other materials from complainant's crematory, and depositing them upon lands in the city and county of San Francisco, and that some of them have been arrested and fined for so doing; that the respondent corporation was organized under the laws of Colorado for the express purpose of depriving complainant of its lawful gains by preventing large quantities of garbage from reaching the cremator-es of complainant, and shipping it away and depositing it on lands in the county of Mateo and elsewhere, outside of this city and county; that in pursuance of the same object the other respondents have conspired with the respondent corporation to deliver daily to it large quantities of garbage, thus diverting it from the crematory of complainant, and that in pursuance of this conspiracy, the respondent corporation has hired two barges capable of carrying more than five hundred tons for the purpose of transporting garbage and such materials to the county of San Mateo and other places outside of this city and county; that by reason of these
165 acts of respondents complainant's contract and franchise has been depreciated, and damages have been inflicted upon it to the amount of twenty-five thousand dollars; that many of the enumerated materials, when reduced, are of value as articles of com-

merce, and that the acts of respondents are depriving complainant of just gains and profits to an amount which it is impossible to state; that complainant is under a contract with the city and county of San Francisco to incinerate all the garbage and enumerated articles, and if respondents are allowed to divert material from complainant, complainant will be rendered liable for breach of contract, and will thereby suffer great and irreparable injury; that complainant has frequently requested respondents to desist, but they have not done so, and if they continue to infringe upon complainant's rights, complainant will suffer great and irreparable injury, without any plain, adequate and complete remedy at law; that respondents have not yet begun to engage in any business except the hiring of barges for the purpose of diverting garbage from complainant; that respondents' acts are contrary to equity, and that complainant has no remedy at law. Complainant therefore asks that an injunction provisional and perpetual issue, and for damages to the amount of twenty-five thousand dollars.

A restraining order was issued upon the filing of the bill.

A several answer was filed by the respondent California Reduction Company, and a joint and several answer by the other respondents.

Respondents deny the validity of the "order No. 2965,"
166 and that it was ever "duly and finally passed, adopted, and enacted;" deny that complainant has cremated the garbage and other materials within twenty-four hours in such a way as to create no nuisance, but aver that a nuisance has been created by complainant; deny that the respondent corporation was organized for the purpose of diverting garbage from complainant; that respondents have been repeatedly arrested and fined for violation of the ordinances named; that any confederacy or conspiracy has been formed for the purpose of interfering with complainant in carrying out the terms of its alleged franchise; that complainant is entitled to all the garbage, etc., collected in the city and county of San Francisco, but aver that it is only entitled to so much as is voluntarily taken to its crematory; deny that complainant has suffered damage to an extent which it is impossible to estimate; that complainant is bound by any franchise to cremate all the garbage collected in the city and county of San Francisco, and that it will be liable for violation of the alleged franchise if it does not do so; that they have unlawfully combined, confederated and conspired, as charged in the bill; admit that they have not yet begun to engage in any business other than the hiring of barges as stated in the bill, but deny that this is being done in pursuance of any contract.

Respondents also offer various affirmative defenses, by which respondent corporation avers that it is engaged in a lawful occupation from which it would be deriving large profits were it not for the stay order issued herein; that complainant can claim nothing under the franchise, as not having complied with the requirement
167 that no nuisance shall be created in the reduction of the materials named, and because complainant has charged a sum

in excess of twenty cents per cubic yard for the cremation of such materials.

Respondents other than respondent corporation also offer affirmative defenses, in which they state that the "order No. 2965" is null and void in that the franchise was not granted to the highest bidder, that complainant has no right under the franchise, because it has not complied with the conditions requiring the cremation of the specified materials without creating a nuisance, and has charged an excess of twenty cents per cubic yard of garbage brought for reduction, that respondents are scavengers and were engaged in delivering materials to respondent corporation, and that they are prevented from lawful gains by the stay order granted herein; that the respondents are householders and create large quantities of the materials enumerated; that these materials are of value to them, and they claim the right to dispose of them in such a way as not to cause a nuisance.

Respondents ask for a dissolution of the stay order, and that no injunction be issued.

The argument of counsel has followed the wide range of the affirmative defenses set up in the respondents' answers. To determine these defenses now would in effect dispose of the case upon its merits, a result not contemplated by the rules governing courts of equity in granting preliminary injunctions.

"The order for such an injunction does not finally determine the rights of the parties to the action, and its only purpose and
168 effect are to preserve the existing state of things until the case has been fully heard by the court, and the entry of a final decree therein. And it is equally well settled that the granting of a provisional injunction rests in the sound discretion of the trial court, and that it is not necessary that the court should, before granting it, be satisfied from the evidence before it that the plaintiff will certainly prevail upon the final hearing of the cause. On the contrary, to adopt the language of the court in Georgia *vs.* Brailsford, 2 Dall. 402, 'a probable right, and a probable danger that such right will be defeated without the special interposition of the court,' is all that need be shown as a basis for such order. See, also, Blount *vs.* Societe, etc., 3 C. C. A. 455, 53 Fed. 98, and cases therein cited."

Southern Pacific Co. *et al. vs.* Earl, 62 Fed. 691.

Under these circumstances, the affirmative defenses set up by respondents cannot be considered as factors in determining this order to show cause.

Complainant's claims to an injunction are based upon the franchise alleged to have been granted by the terms of the order known as "order No. 2965" of the board of supervisors of the city and county of San Francisco, and in accordance with the provisions of an act of the legislature entitled an "Act providing for the sale of railroad and other franchises in municipalities, and relative to

granting of franchise," approved March 23, 1893. (Stats. 1893, 283.) The first section of this act reads: "Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate railroads along or upon any public street or highway, or to
169 exercise any other public privilege whatever hereafter proposed to be granted by the board of supervisors, common council, or other governing or legislative body of any county, city or county, city, town or district, within this State, shall be granted upon the conditions in the act provided, and not otherwise."

Respondents maintain that the franchise alleged to have been granted to complainant is invalid, because it was not granted according to the provisions of the consolidation act of the city and county of San Francisco (Stats. Cal. 1856, 164), section 68 of which provides that every ordinance or resolution of the board of supervisors granting any privilege or involving the lease or appropriation of public property, or the expenditure of public moneys (except for sums less than $500), must be published with the ayes and nays in a city daily newspaper for five successive days before the board take final action; and every such ordinance must be presented to the president of the board for his approval. If he approve, he shall sign it, and if not, he shall return it to the board with suggestions in writing within ten days. The board shall then enter the objections on the journals, and publish them in some city newspaper. If at any stated meeting thereafter two-thirds of the board (changed to three-quarters, Stats. Cal. 1867–8, 702) vote for such ordinance or resolution, it shall then, despite the objections of the president, become valid.

The consolidation act, it is argued by respondents, was not
170 superseded by the act of 1893, and the franchise claimed by complainant should have been granted in accordance with its terms.

The act of 1893, however, provides very clearly that such franchises as are specified and "any other public privilege whatever hereafter proposed to be granted by the board of supervisors * * * shall be granted upon the conditions in the act provided, and not otherwise."

In the case of The People *vs.* Board of Supervisors of Contra Costa County, 122 Cal., 421, it was decided by the supreme court of this State that a franchise for the construction and maintenance of a wharf should have been granted under this act of 1893. The court said, speaking of the act quoted above: "This language is broad in its terms. It is difficult to imagine language broader in its significance and more explicit upon the subject with which the act is dealing. It includes the franchise here before us." And again: "It is insisted that the board made a grant of the franchise under certain provisions of the Political Code, and therefore it is claimed that the act of the legislature passed in 1893 cannot furnish a test upon which to base a decision as to an exercise or nonexercise of judicial function on the part of the board in granting the franchise.

This position cannot be maintained. This franchise should have been granted by the supervisors under the provisions of the act of 1893."

In face of this decision of the supreme court, respondents'
171 contention in regard to the invalidity of "order No. 2965" as based solely upon the act of 1893, cannot be sustained.

In the constitution of 1849 it was provided in article XI, section 5, "that the legislature shall have power to provide for the election of a board of supervisors in each county, and these supervisors shall jointly and individually perform such duties as may be prescribed by law." By the act of April 25, 1863 (Stats. 1863, 540), it was provided that "the board of supervisors of the city and county of San Francisco shall have power, by regulation or order: * * * to authorize and direct the summary abatement of nuisances; to make all regulations which may be necessary or expedient for the preservation of the public health and the prevention of contagious diseases; to provide, by regulation, for the prevention and summary removal of all nuisances and obstructions in the streets, alleys, highways, and public grounds of said city and county." And in the constitution of 1879 it was provided in article XI, section 11, that "any county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

In the case of Alpers *vs.* City and County of San Francisco, 32 Fed. 503, Mr. Justice Field, in speaking of the power of the municipality of San Francisco to make provision for the removal of nuisances, said: "There is no doubt that the contract between the plaintiff and the city and county of San Francisco is one within the competency of the municipality to make. It is within the power of all
172 such bodies to provide for the health of their inhabitants by causing the removal from their limits of all dead animals not slain for human food, which otherwise would soon decay, and, by corrupting the air, engender disease. And provisions for such removal may be made by contract, as well as the performance of any other duty touching the health and comfort of the city; its authorities always preserving such control over the matter as to secure an observance of proper sanitary regulations. * * * The contract in question does not appear to be open to any serious objection; none is alleged against its provisions. It imposes no burden upon the municipality. The removal of the dead animals is to be made without any expense to it. The compensation of the party making the removal is to be found in the uses to which the animals are or may be put. Their hides are converted into leather, from some of which shoes, from others gloves, are made. Of their bones, buttons or handles for knives may be manufactured; from their flesh and fat, various oils may be distilled for use in the arts. And in case of horned animals, glue from their hoofs and combs from their horns may be made. Indeed, all parts of the animals may be put to some useful purpose. It requires, however, for such uses,

special and somewhat expensive machinery, and also, it is said, the employment of hands trained to the business. All these facilities the bill alleges have been provided by the plaintiff."

National Fertilizer Co. *vs.* Lambert *et al.*, 48 Fed. 458, was a suit brought by the assignees of the above Alpers to restrain
173 respondents from infringing upon the exclusive right of complainant under the contract. Judge Hawley quoted the language of Justice Field in the Alpers case, and gave complainant the injunction asked for.

These authorities establish the doctrine that the board of supervisors has the power to provide for the removal of garbage and materials about to become nuisances.

The decision of the board of supervisors that various enumerated materials are nuisances is conclusive of the fact. In *Ex parte* Lacey, 108 Cal. 326, the petitioner had been convicted and imprisoned for violating a city ordinance of the city of Los Angeles, which provided: "No person or persons shall establish or conduct any steam shoddy machine, or steam carpet-beating machine, within one hundred feet of any church, school-house, residence or dwelling-house." It was contended that the ordinance was void on the ground that it interfered with certain of the petitioner's inalienable rights vouchsafed to him by the constitution. On the part of the city it was claimed that the passage and enforcement of the ordinance was but the exercise of a police power granted to it by the constitution of the State, in terms. The supreme court passed upon the question in controversy as follows: "Conceding the business covered by the provisions of this ordinance not to constitute a nuisance *per se*, and to stand upon different grounds from powder factories, street obstructions, and the like, still the case is
174 made no better for petitioner. This is not a question of nuisance, *per se*, and the power to regulate is in no way dependent upon such conditions. Indeed, as to nuisances *per se*, the general laws of the State are ample to deal with them. But the business here involved may properly be classed with livery stables, laundries, soap and glue factories, etc., a class of business undertakings in the conduct of which police and sanitary regulations are made to a greater or less degree by every city in the country. And in this class of cases it is no defense to the validity of regulation ordinances to say: 'I am committing no nuisance, and I insist upon being heard before a court or jury upon that question of fact.' In this class of cases a defendant has no such right. To the extent that it was material in creating a valid ordinance we must assume that such question was decided by the municipal authorities and decided against petitioner and all others similarly situated."

See, also, *Ex parte* Casinello, 62 Cal. 538;

North Chicago City Ry. Co. *vs.* Town of Lakeview, 105 Ill. 207.

The charge of twenty cents per cubic yard of garbage brought for reduction to the crematory cannot be regarded as in the nature of a tax or assessment, or as a charge which the board of supervisors has no right to impose. This question was before the court in the case of Walker *vs.* Jamison, 140 Ind., 591. An ordinance was there under consideration providing that garbage should be collected only by the city's licensed agent, and that the parties producing garbage should place it in boxes for removal provided by
175 such agent at their expense, and a contract empowering the contractor to collect such garbage and to charge a specified price per pound for its removal. It was contended that the provision for payment by the householder for the removal of the garbage was an assessment against him or his property, and as the charter did not confer the power to make an assessment of this kind, it could not be made. The court said: "Whatever else it may be, it is certainly not an assessment. It has not a single element of an assessment, for the reasons—first, that, except by the voluntary act of the householder, nothing is to be paid at all; second, no definite amount in any event is to be paid; third, nothing is made a charge upon the property. The whole arrangement is simply a provision by the ordinance—first, that garbage shall be collected and carted through the streets only by the licensed agent of the city; second, that parties producing the garbage needing to be thus carted away shall place the same in proper vessels, convenient for the removal by such agent; and third, that such agent shall charge not exceeding the price named for removing the same. It is no more an assessment than is the provision of the ordinance fixing the rate of payment for gas or water, or street-car fare."

The law as established by the Slaughter-house cases, 16 Wall. 36, is clearly decisive as to the question of the right of a municipality to impose a reasonable charge for the removal of a nuisance, and it is not claimed in the present case that the charge imposed by the ordinance is excessive. The court in that case said: "Unless,
176 therefore, it can be maintained that the exclusive privilege granted by this charter to the corporation is beyond the power of the legislature of Louisiana, there can be no just exception to the validity of the statute. And in this respect we are unable to see that these privileges are especially odious or objectionable. The duty imposed as a consideration for the privilege is well defined, and its enforcement well guarded. The prices or charges to be made by the company are limited by the statute, and we are not advised that they are on the whole exorbitant or unjust."

Respondents maintain that their acts do not injure the complainant; but if complainant is entitled to the whole of the garbage created in the city and county of San Francisco, and such is its claim, it is obvious that the continual shipment of it must necessarily be injurious to its interests, and to a degree which would render an injunction *pendente lite* appropriate under the circumstances.

Let a preliminary injunction issue in accordance with the prayer of the bill of complaint.

(Endorsed:) Filed May 25th, 1899. Southard Hoffman, clerk.

177 In the Circuit Court of the United States in and for the Northern District of California, Ninth Judicial Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

Notice of Taking Proofs on Behalf of Complainant.

To the respondents herein and to Messrs. Page, McCutchen & Eells, Garret W. McEnerney, Esq., Messrs. Black & Leaming, and Mich. Mulaney, Esq., solicitors for respondents:

You and each of you will please take notice that on Tuesday, the 28th day of March, 1899, at the office of the Hon. E. H. Heacock, master of chancery of said court, in the Appraisers' building, on the northeast corner of Sansome and Washington streets, in the city and county of San Francisco, at the hour of ten o'clock a. m. of said day, or as soon thereafter as counsel can be heard, we shall proceed to take proof on behalf of the complainant herein.

You are invited to be present and cross-examine the witnesses.

178 Dated, San Francisco, March 23d, 1899.

PIERSON & MITCHELL,
Solicitors for Complainant.

Service of within notice of taking proof is hereby admitted this 24th day of March, 1899.

PAGE, McCUTCHEN & EELLS,
GARRET W. McENERNEY,
BLACK & LEAMING,
MICH. MULLANEY,
Solicitors for Respondents.

In the Circuit Court of the United States for the Ninth Judicial Circuit in and for the Northern District of California.

Before the Honorable E. H. Heacock, Examiner in Chancery.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO *et al.*, Complainants,
vs.
CALIFORNIA REDUCTION CO. ET AL., Respondents.
} In Equity. No. 12714.

Testimony.

Be it remembered that on the 28th day of March, 1899, and on the several days thereafter to which the examination was
179 regularly adjourned, as hereinafter set forth, at my office, room 87, in the United States Appraisers' building on the southeast corner of Jackson and Sansome streets, in the city and county of San Francisco, State of California, before me, E. H. Heacock, examiner in chancery of the United States for the ninth circuit and northern district of California, personally appeared the several witnesses whose names are hereinafter set forth, who were produced and examined on behalf of the respective parties to the above entitled cause.

Wm. M. Pierson, Esq., appeared as counsel on behalf of complainants, and E. B. Leaming, Esq., as counsel on behalf of respondents. Following is a record of the proceedings:

(It is hereby stipulated that the testimony be taken down by B. C. Brown, a stenographic reporter, and reduced by him to writing, and that the expenses of the witnesses proposed by the complainants be borne by said complainants in the first instance, and those on behalf of respondents to be borne by them.)

Mr. LEAMING: In the absence of Mr. McEnerney, the attorney of record for the respondents other than The California Reduction Company, I will represent said respondents.

Mr. PIERSON: I now offer in evidence a certified copy of order No. 2965, which is set out in full in complainants' bill.

Mr. LEAMING: We object to the order offered upon the ground that it appears upon its face to be a mere order of the board
180 of supervisors of this city and county adopted by the board by a vote of eight ayes; that it has never been published or submitted to the mayor for approval, and is in no respect an ordinance or an order of such a nature as will confer the franchises and privileges referred to in the body of the order by reason of the provision of the consolidated city and county act of this municipality.

(Marked Complainants' Exhibit "A.")

Mr. PIERSON: I now offer in evidence a certified copy of order No. 12, second series, also set out in the bill of complaint.

Mr. LEAMING: I will make the general objection to it that it is immaterial.

(Marked Complainants' Exhibit "B.")

Examination-in-chief of BEHREND JOOST, a witness called on behalf of complainants, sworn.

(By Mr. PIERSON:)

Q. 1. Mr. Joost, do you hold any official position in the defendant corporation, The California Reduction Company?

A. I do.

Q. 2. What position do you hold?

A. President.

Q. 3. How long have you been president of that corporation?

A. I have been for about five months.

Q. 4. Have you been president of that corporation ever since its incorporation?

A. No, sir.

Q. 5. Who was president before you?

A. I could not say; the company was organized before I came into it.

181 Q. 6. How long before?

A. I think about six weeks.

Q. 7. Where was that company incorporated?

A. In the State of Colorado.

Q. 8. Were you one of the incorporators?

A. No, sir.

Q. 9. Who were the incorporators?

A. Well, I could not say; I know some of them.

Q. 10. Name those that you do know.

A. Mr. Carter Tevis, Mr. John Clemishere and a man by the name of Howes. I don't know his first initials.

Q. 11. These were the three incorporators?

A. Yes, sir; and two besides them.

Q. 12. Were you interested in that incorporation at the time it was incorporated?

A. No, sir.

Q. 13. After the incorporation you were the first president, were you not?

A. No, sir; I think the first president resigned.

Q. 14. Who was that?

A. Well, I could not say; I don't know.

Q. 15. Who is the present secretary of that corporation?

A. Mr. John Clemishere.

Q. 16. The one that you spoke of as being one of the incorporators?

A. Yes, sir.

Q. 17. You have been subpœnaed here this morning to produce any contracts which you have with any person for the carrying of

garbage out of the city and county of San Francisco. Have you those documents with you?

182 A. The secretary has got them; I have not got them.

Q. 18. Can't you get them from him now?

A. Yes, sir.

Q. 19. You now produce a contract of that character?

A. That is a contract from the scavengers.

(Producing a document dated November 22, 1898, between the California Reduction Company and the persons whose names and signatures are annexed thereto.)

(It is stipulated that the paper above referred to may be copied into the record in full.)

This agreement made this 22d day of November, 1898, between the California Reduction Company, a corporation to transact business in the State of California, the party of the first part, and the persons whose names and signatures appear upon Exhibit "A" hereunto annexed, made a part hereof, and hereby referred to for the parties of the second part.

Witnesseth: That the said parties of the first part and second parts mutually agree, each in consideration of the covenants and agreements of the other, as follows, to-wit:

SECTION 1. The said party of the first part agree- within thirty days after the execution of this agreement to provide one or more suitable buildings, wharves or other places for the reception, from the said parties of the second part, of all garbage, ashes, refuse, butchers' offal, dirt, sludge, crockery, tins or other like matter, or any putrid animal or vegetable matter, or any fish, flesh, or

183 food, or any dead animals; which said buildings, wharves, or other place or places shall be so located that the average haul to the same shall not exceed the average haul to the Sanitary Reduction Works by more than one quarter of a mile.

SECTION 2. The said parties of the first part agree to receive at the above mentioned place or places all the materials and substances specified in section one hereof, and to dispose of the same in some legal manner and without any further, other or additional cost or expenses to the said parties of the second part, than the cost and expense specified in section 3 hereof.

SECTION 3. The said parties of the second part, hereby declare that they are and each of them is, engaged in the business of scavengers in the city and county of San Francisco, and that they each are the owners or interested in one or more wagons employed in the business of gathering garbage in said city and county, and the said parties of the second part hereby agree, and each of the said parties of the second part agrees that as soon as the said party of the first part shall be prepared to receive garbage at the place or places mentioned in section 1 hereof, that they, and each of them, will bring and deliver all garbage, ashes, manure, refuse, butchers' offal, dirt, sludge, crockery, tins or other like matter, or any putrid animal or

vegetable matter, or any fish, flesh, or food, or any dead animals gathered by them, at such place or places, and pay to the said party of the first part upon receipt by them of any of the materials
184 or substances herein specified, the sum of eighteen cents for each and every cubic yard of such material or substance so delivered and received; provided that second parties reserve the right to sell such refuse, manure, clean papers, ashes, tins, and all articles that are salable.

SECTION 4. It is agreed that the capacity of each wagon employed by the parties of the second part in hauling and delivering garbage, shall be determined by two competent persons, one to be appointed by the parties of the first part, and the other to be appointed by the parties of the second part. Said persons shall measure each wagon, calculate its cubic capacity at different elevations in the box and affix to each wagon a scale by which the cubic contents of each wagon may be determined by units of one-half cubic yard each.

Should said parties disagree, the question shall be referred to the city and county surveyor for final decision.

Upon delivering garbage the said parties of the second part shall pay for each cubic yard or fraction thereof as hereinbefore provided, according to the cubic contents of material as indicated by such scale on their wagon, and the said parties of the first part agree to receive all material according to such scale measurements, upon payment to them of the sum of eighteen cents for each yard of material or a proportional price for any fractional cubic yard delivered, no single delivery to be of less than one cubic yard.

SECTION 5. First party to protect second parties from each
185 and all arrests caused by second parties delivering any of the materials in this contract named to first party, and to pay all expenses for defending any of said second parties who may be arrested by reason of delivering any of the articles herein named to first party.

SECTION 6. It is further agreed that this agreement shall be and remain in full force and effect, and binding upon the said first and second parties for the term of five years from the date hereof, allowing, however, to the parties of the first part the period of thirty days from the execution hereof by the said parties within which to prepare to receive and dispose of the said garbage and material.

SECTION 7. The said parties of the second part shall, upon the execution of this agreement, make, execute, and deliver to the said parties of the first part, a good and sufficient bond with at least two sureties who shall be satisfactory to said party of the first part, in the sum total, aggregating one hundred dollars for each of said parties of the second part, who may operate one or more two-horse wagons in their said business the sum of fifty dollars to be computed for each of the parties of the second part operating no more than one, one-horse wagon in lieu of one hundred dollars for paries operating at least one two-horse wagon; conditioned that each and every and all of said parties of the second part shall faithfully perform and

keep all and every of the terms, conditions, and covenants of this agreement to be by them kept and performed.

186 It is understood that said bond may be sued on successively upon each violation of this agreement by any one or more of said second parties and until the full penal sum thereof shall have been exhausted, and it is further agreed that damages sustained by the infraction of this agreement by any one of said second parties shall not for any one infraction exceed one hundred dollars, and that attorneys' fees shall be allowed in each action brought on said bond, in addition to said one hundred dollars, such fees to be the amount usually allowed on foreclosure of mortgage.

SECTION 8. The said party of the first part shall upon the execution of this agreement by them, execute a good and sufficient bond in the sum of four thousand dollars to said parties of the second part, with bondsmen to their satisfaction conditioned that said party of the first part faithfully performing and keeping all and each of the covenants and conditions of this agreement to be by them kept and performed.

But it is, however, understood that no party hereto shall be responsible either personally or on his bond for failure to keep the terms of this agreement should such failure be caused by the direct interference of any court of law, or by a final adjudication of any court declaring the provisions of this agreement illegal.

SECTION 9. The parties of the second part agree not to deliver any of the material or substances mentioned herein to any other party than said party of the first part, or at any other place than as

187 designated and chosen by said party of the first part; and said parties of the second part hereby stipulate that should any one or more of said parties of the second part deliver or discharge said materials elsewhere or to any other person than as herein designated, that said party of the first part may at its election proceed on the bond provided hereunder or may have and are thereupon entitled to an injunction against said party or parties from any court of competent jurisdiction, forbidding said party or parties to thereafter dump said substances or materials at any point or to deliver them to any person not authorized by the terms of this agreement.

Should said party of the first part elect to proceed by injunction, it is hereby agreed and stipulated that said injunction may issue on the filing of a certified copy of this agreement in the proper legal proceeding in said court, and that the said party of the first part have in such premises no plain, speedy or adequate remedy at law, and that should such infraction of this contract continue, great and irreparable injury would result to said party of the first part, which cannot be adequately compensated in damages.

SECTION 10. It is understood that this agreement is to cover and provide for the delivery of all substances mentioned in section 3 hereof, by each and all the scavengers, parties hereto, to said party

of the first part, for the term mentioned, except only as provided in sections numbers three and eleven.

188 SECTION 11. It is hereby stipulated that any party hereto who gathers or receives in San Francisco a full wagon load of clean factory ashes or clinkers, with no other or foreign substance therein, shall have the privilege of delivering the same to said party of the first part for disposal, free of charge to said second party. But should said party of the first part desire to have said clean ashes or clinkers delivered at some other place than at the receiving depot of said party of the first part, they may have such delivery by so notifying the party having such ashes or clinkers for delivery of the place of delivery desired by said first party, and said second party shall deliver said material as desired. But it is stipulated said delivery shall not be required at any point, the haul to which exceeds the haul to the regular place of delivery of said party of the first part by one-half mile.

SECTION 12. All notices to be served on said parties of the second part, relative to this agreement, may be served either individually on the said second parties affected thereby or upon one or both of said bondsmen; and if so served shall have full force and effect.

SECTION 13. But it is hereby agreed by said party of the first part that it shall not take garbage from any other persons under any terms more favorable than those secured by this said contract to the said parties hereto, unless such favorable terms be extended to all parties concerned herein.

189 SECTION 14. Each and every of the terms of this agreement to bind the respective executors, administrators, successors, heirs and assigns of the parties hereto.

In witness whereof, and in pursuance of a resolution of its board of directors, first party has caused these presents to be signed by its president and secretary, and its corporate seal to be affixed, and the second parties have respectively signed their names the day and year first above written.

BEHREND JOOST, President,

[SEAL.] By JOHN CLEMISHIRE, Secretary.

ANDREA POPETTA.	12.
MICHELLA MAROS.	11.
FRANCESCO POPIANO.	166.
GIAMBATTISTO BAGGIO.	126.
DOMENICO ESPARTO.	172.
RUSTICI RAETO.	43.
VARNI ANTONIO.	13.
BAROZZI PAOLO.	26.
FIRENZE GIOVANNI.	95.
RUNCALLO GUISEPPE.	104.
FIGONE FRANCESCO.	X 51.
SORANO FRANCESCO.	34.
FIGGNE LUIGI.	X 52.
RUSTICI ANGELO.	26.

	S. SEMENSA SLUCHINETTI.	71.
	CARLO LERCARI.	5.
	GIOVANNI PIETT.	13.
	ANTONIO FIGONE.	38.
190	QUIEROLO GIOVANNI.	75.
	G. B. TURRE.	88.
	A. CHIPAPELLONE.	8.
	L. COSISLO.	50.
	B. GAMBRUNO.	10.
	ANDREA.	1101.
	GIOVANNI RENATI.	90.
	STEFANO R.	108.
	PETER CALOSI.	41.
	GIOVANNI FIGONE.	94.
	ANGELO DEVINCENZI.	87.
	ANTONIO FIGONE.	X 178.
	P. DE MARTINI.	31.
	GAGLIONO VARNI.	123.
	LUIGI FIGONE.	22.
	ANTONIO DELUCCHI.	X 76.
	ANGELO BRANCHI.	124.
	LUIGI NOY.	155.
	CAMPI ANTONIO.	89.
	DOMENICO FIRENZZI.	162.
	GIOVANNI FIGONE.	22.
	G. VALENTE.	32.
	LUIGI FERARI.	133.
	LUIGI DEVINCENSI.	112.
	E. PICETATI.	X 80.
	ANGELO DEVINCENZI.	X 117.
	CUNEO MICHELE.	36.
	LUIGI FIRPO.	30.
	OTTARIO TORRE.	96.
	GUISEPPE DE MARTINI.	47.
191	GUISEPPE TORRE.	114.
	LUIGI CACIGALUPEE.	48.
	GIAVA EMANUEL.	43.
	DAVIDE DE MARTINI.	103.
	FRANCESCO DELUCCH1.	66.
	STEFANO CAPELLO.	15.
	GUISEPPE MOLINARRI.	35.
	GIOVANNI NOCE.	11.
	ANTONIO DEVINCENZI.	153.
	DOMENICO BARGAGLIOTI,	121.
	PAGONINO GIOVANNI.	44.
	JULIO DE MARTINI.	23.
	LUIGI FERRARI.	73.
	FREDINATTI NINATI.	49.
	LUIGI FIGONE.	61.
	ANTONIO CUNEO.	134.

	GIOVANNI FIGONE.	—.
	GIOVANNI FIGONE.	143.
	AMERICO SERACCI.	117.
	M. D. LEVENSON.	4, 5, & 6.
	DINI SORRACO.	152.
	FRANCESCO FRAVIGA.	62.
	GI FOPIANO.	60.
	S. B. LINARI.	59.
	OTTO BORRE BERTOLOMEO.	53.
	G. GINIO.	200.
	D. FIGONE.	X 112.
	GUISEPPE FIGONE.	X 72.
	LUIGI DEVINCENZI.	167.
	G. B. RAGGIO.	No. 21.
	VITTORIO REPPETO.	70.
192	DOMENICO FIRENZE.	138.
	ANTONIO BOICELLI.	No. 72.
	CARLO ROSSI.	17.
	FOSSA G. B.	16.
	G. CEREGHINO.	No. 148.
	ANTONIO X. CAMICIA.	154.
	EMILIO DEVINCEZI.	No. 139.
	PIETRO LEONARDINI.	No. 77.
	GIOVANN X. CAMICIA.	156.
	G. D. CERUTI.	No. 205.
	ANTONIO MOSCONI.	No. 132.
	G. ARCONI.	79.
	GIOVANNI DEVINCENZI.	No. 107.
	PIETRONAVE CESARE.	33.
	LANTERI FELICE.	14.
	LORENZO GOTELLI.	157.
	CHIAPPELLONO GUISEPPE.	128.
	LUCHETTI GIOVANNI.	67.
	D. FIGONE.	135.
	D. FIGONE.	136.
	BATTO PIETRO.	143.
	G. FIGONE.	142.
	GOTTELLI VINCENZO.	152.
	G. GORBORINO.	176.
	DOMENICO DELLUCCHI.	122.
	MORO MORISCO.	163.
	G. BINIOLINARI.	54.
	FRANCESCO PICCOLLO.	58.
	FELICE ROOCHA.	19.
193	B. PASQUALITI.	161.
	LUIGI FIGONE.	X 140.
	Z. CONGELLI.	81.
	ANTONIO BACIONIO.	105.

GUISEPPE FIGONE,
As Trustee for Above Signers.

Q. 20. What business are the persons engaged in whose names are subscribed to that agreement?

A. The California Reduction Company is engaged in carrying garbage of the city and county to some other counties.

Q. 21. Did you say "is engaged," or "was engaged at that time?"

A. Well, "was engaged;" or "tried to be engage- themselves."

Q. 22. What was the occupation of the other parties?

A. Of carrying garbage away from this city and county and loading on barges, to another county.

Q. 23. Now what was the occupation of the other parties to that agreement?

A. The scavengers?

Q. 24. They were scavengers, were they?

A. Well, the other party.

Q. 25. The other parties to that agreement were scavengers at that time?

A. Yes, sir.

Q. 26. Engaged in the business as scavengers where?

A. In this city and county.

Q. 27. Did you ever enter upon the performance of that contract on behalf of your company?

A. We did, sir.

194 Q. 28. When did you commence?

A. The 19th day of December, 1898.

Q. 29. Shortly before this suit was commenced?

A. At the same time.

Q. 30. In compliance with that contract did the other defendants—I speak now of the scavengers defendants—perform their part of that contract?

A. Some of them did.

Q. 31. Who?

A. Well, I could not say. I have got no record of it.

Q. 32. Were the parties who did attempt to perform their part of the contract defendants in this case?

A. I believe some was.

Q. 33. How many of those scavengers on the 14th of December endeavored to deliver garbage to your barges, about how many?

A. Well, I could not say.

Q. 34. You could not say about how many.?

A. I should say there was about forty-five, yes.

Q. 35. What do you mean, forty-five different scavengers?

A. Well, that I could not say.

Q. 36. Well, each load is driven by a scavenger, isn't it?

A. Yes, sir.

Q. 37. Then were there forty-five different scavengers engaged on that day in delivering garbage to you?

A. Well, one scavenger might have had a couple of wagons, might have had three wagons.

Q. 38. With only one driver?

195 A. No, they all had two men on the cart, I think, most of them.

Q. 39. At the time that you made this contract, at the time that you commenced to perform it, did you know of the existence of order No. 2956 now in evidence?

A. No, sir.

Q. 40. You did not?

A. No, sir. I know they had an order but I didn't know what the number of the order was.

Q. 41. You knew that there was an order of the board of supervisors which purported to confer upon the complainants the exclusive right to cremate garbage in this city and county, did you?

A. I was informed so; yes, sir.

Q. 42. Did you at the same time know of the existence of order No. 12 of second series, marked Complainant's Exhibit "B"?

A. No, sir.

Q. 43. Did you know at the time that by order No. 12, second series, it was made a crime to remove garbage from the city and county of San Francisco?

A. No, sir.

Q. 44. You did not?

A. No, sir.

Q. 45. Did you not know that the defendants here, a large number of them have been arrested and convicted under order No. 12, second series, for performing that very act?

A. Yes, I heard that some of these scavengers had been arrested.

Q. 46. And convicted?

A. I didn't know that they had been convicted.

196 Q. 47. Are any of the defendants who are scavengers stockholders in this company?

A. No. sir.

Q. 48. At what point did you commence to receive garbage under this contract from the boss scavengers? What point in the city I mean?

A. At the block bordered by Mission Channel, Berry street, Fifth and Sixth, in this city and county.

Q. 49. Mission Channel? There is no such street as Mission Channel.

A. Oh, yes there is. A channel it is; it is an open channel.

Q. 50. You mean Channel street?

A. It is an open channel.

Q. 51. What you mean is what we call Channel street?

A. Yes, sir.

Q. 52. Channel, Fifth and Sixth, and what?

A. Berry.

Q. 53. How did your corporation come into possession of this position?

A. We leased it, or we rented it rather.

Q. 54. From whom?

A. From the George Sharp estate.

Q. 55. From the estate of George F. Sharp?

A. Yes, sir.

Q. 56. What did you agree to pay for that position?

A. One hundred and forty dollars per month.

Q. 57. From whom did you obtain the barges with which you expected to carry out this contract?

A. From the firm of Warren & Malley.

Q. 58. Have you your copy of that contract with you?

197 A. No, sir, I have not.

Q. 59. Has your secretary, Mr. Clemishere?

A. I don't know.

Mr. LEAMING: What is the purpose of this examination? I have not objected so far to your going into the private affairs of the company, but it seems to me that when you commence to examine into contracts for barges it is passing beyond any proper scope.

Mr. PIERSON: I claim the right to show the matter of the interference with our franchise.

Mr. LEAMING: I will not object to the introduction of the barge contract.

(The witness produces a contract, a paper dated December 8, 1898, between Charles A. Warren, and Edward Malley, partners trading as Warren & Malley on the one part and the California Reduction Co. on the other part.)

Mr. PIERSON: I would like to have that copied into the record as was the other document.

Mr. LEAMING: It is satisfactory; let it go into the record.

(Note by stenographer.—Following is a copy of the document:)

This agreement made this 8th day of December, A. D. 1898, by and between Charles A. Warren and Edward Malley, copartners trading as "Warren & Malley," of San Francisco, California, party of the first part, and "The California Reduction Company," a corporation of Colorado, duly authorized and empowered to transact

198 business in the State of California, party of the second part, witnesseth:

That for and in consideration of the mutual benefits arising to the respective parties thereto and the mutual promises contained herein and the further consideration of the sum of one dollar, each, in hand paid by the party of the second part to the party of the first part, the payment and receipt whereof is hereby mutually acknowledged, the respective parties hereto do hereby covenant and mutually agree as follows:

The party of the first part does hereby agree to deliver and lease to and does hereby lease to the party of the second part, two certain barges heretofore agreed upon for the term of six months at the time and upon the terms herinafter set forth, said barges being one hundred and thirty feet in length by thirty-five feet in breadth and warranted by the party of the first part to be in good order and

sound and tight and without leaks or defects; and the party of the first part do agree further to supply with said barges during said term of six months, hereinafter named, at their own expense and cost, two competent men to act as keepers or care-tenders of said barges, one with each of said barges, it being understood that said barges shall be used only for hauling garbage and refuse and like material.

The term for which said barges and said men are hereby leased to the party of the second part is six months beginning on
199 the 11th day of December, A. D. 1898, or from such earlier date as the first party shall be able to deliver said barges.

The party of the second part does hereby covenant and agree to pay the said party of the first part as compensation for the use of said barge and men, the sum of five hundred dollars per month during said term of six months, and does agree to make payment of said rental as follows:

At the date of the execution of this agreement second party shall deposit five hundred dollars in cash with Charles A. Warren, the same to represent the first month's rent, and said Warren shall pay the said five hundred dollars to the party of the first part on the day that said barges are delivered to the second party, and said payment shall represent and discharge the first month's rent for said barges; and the remaining twenty-five hundred dollars rent shall be paid in semi-monthly payments of two hundred and fifty dollars each of the first day of February, A. D. 1899, the fifteenth day of February, A. D. 1899, and semi-monthly thereafter in like manner.

It is mutually agreed that the party of the second part shall have the privilege, at their own expense, to construct on said barges such platforms and retaining sides as the party of the second part shall find necessary or convenient for the use of said barges in their business of transporting garbage on said barges; but such construction must be done in such a manner as to occasion no injury to said barges.

200 It is further mutually agreed that all wear and tear of said barges arising from the reasonable use thereof, shall be borne by the party of the first part, and the party of the first part shall maintain said barges tight and in good order; and said barges shall, during said term be at the risk of the party of the first part except for injuries occasioned by the negligence of the party of the second part, or its agents or representatives.

The party of the second part further agrees to supply to the party of the first part before said barges are delivered, good and sufficient security in the amount of twenty-five hundred dollars for the payment of rent to accrue as rental for said barges during the five months succeeding the first month of said term, and for the full and faithful performance of the terms and provisions of this contract.

The party of the first part further agrees to deliver one or both of said barges at a date earlier than December 11, A. D. 1898, if they can do so, and should either of said barges be delivered earlier than

December 11, 1898, the rental for such barge or barges as are so delivered shall commence to run two days after such delivery.

In witness whereof, the said parties of the first part have hereto set their hands and seals this 8th day of December, A. D. 1898, and the second party at the same time has caused this agreement
201 to be signed by its president and attested by its secretary pursuant to a resolution of said company for that purpose.

(Signed) WARREN & MALLEY.
THE CALIFORNIA REDUCTION COMPANY,
By BEHREND JOOST, President.
[SEAL.] JOHN CLEMISHIRE, Sec.

Signed, sealed and delivered in the presence of:

CARTER TEVIS.

(By Mr. PIERSON:)

Q. 60. Under your contract with Warren and Malley, what amount of garbage could you have removed from the city of San Francisco under the terms of that contract with the scavengers, Complainants' Exhibit "A?"

The WITNESS: Shall I answer?
Mr. LEAMING: Yes.

A. I did figure it once, but I don't recollect just now. I think we would be able to take away on each of these barges—there is two of them—about 120 or 122 loads, ordinary loads.

Q. 61. In each, or in both?

A. In each.

Q. 62. Where did your corporation intend to deposit that garbage under the terms of the contract?

A. In swamp lands.

Q. 63. Where?

A. In San Mateo county.

202 Cross-examination.

(By Mr. LEAMING:)

X Q. 1. Mr. Joost, you may state to the court also whether your company contemplated reduction of garbage and other materials by it received, by other methods of applying the material received to useful purposes?

A. The purpose was first to use part of the material to fill in swamp lands, to make gardens out of it. Bones and waste paper to sell it; copper, zinc, iron and other materials, also sell that.

X Q. 64. What about tins and glass?

A. That also was gathered and sold.

Examination-in-chief of JOHN CLEMISHIRE, a witness called on behalf of complainants, sworn.

(By Mr. PIERSON:)

Q. 1. You are secretary of the defendant, The California Reduction Works?

A. Yes, sir.

Q. 2. How long have you been occupied as such?

A. Ever since the company has been organized.

Q. 3. When was that?

A. Well, I could not really tell you the date when the company was organized. It was some time about seven months ago, I think.

Q. 4. You were one of the original incorporators?

A. Yes, sir.

Q. 5. Who, beside you, were incorporators?

A. Well, there was Mr. Tevis and Mr. Howse.

203 Q. 6. Carter Tevis, you mean?

A. Yes, sir.

Q. 7. And Mr. Howse; what Howse is that?

A. Well he is up in the Western Oregon Land Co., I believe, J. W. Howse.

Q. 8. Who else?

A. Mr. Carmody.

Q. 9. And his initials are what?

A. I don't know. And J. R. McClung.

Q. 10. Then you five were the original incorporators?

A. Yes, sir.

Q. 11. Were either of you residents of Colorado at the time of the incorporation?

A. No.

Q. 12. For what purpose was that company incorporated?

A. For the purpose of gathering garbage and reducing it.

Q. 13. To gather garbage from where?

A. From the city and county of San Francisco.

Q. 14. Was it one of its purposes to remove garbage from San Francisco to other countries?

A. To remove it out of the city.

Q. 15. To remove it out of the city and county?

A. Yes, sir.

Q. 16. Who was the first president of your company?

A. Carter Tevis.

Q. 17. And he remained president how long?

A. I think a month or six weeks.

Q. 18. And then he was succeeded by Mr. Joost?

A. Yes, sir.

204 Q. 19. Mr. Joost who produced the order and contract made between the California Reduction Works and certain scavengers. Has that company made contracts with any other persons for the removal of garbage from San Francisco?

A. What? Other scavengers?

Q. 20. Any other contract with anybody else?

A. Not that I know of, only except Warren & Malley for the barges.

Q. 21. No, I didn't mean that. I mean for the removal of garbage out of the county?

A. I don't really understand you, Mr. Pierson.

Q. 22. A contract has been produced between the California Reduction Company and certain scavengers for the removal of garbage out of this county. Is there any other contract between the California Reduction Company and any other person for the removal of garbage out of this county?

A. Not that I know of.

Cross-examination.

(Mr. LEAMING:)

X Q. 1. You may state whether or not it was contemplated by the company to remove garbage and other refuse material that would be brought to it, irrespective of whether it was brought by a party to this contract or not. Do you understand?

A. We expected to receive everything that was brought to us.

X Q. 2. Whether by the scavengers or by anybody else?

A. Whether by the scavengers or by outside parties.

205 Examination-in-chief of L. R. ELLERT, a witness called on behalf of complainants, sworn:

(By PIERSON:)

Q. 1. Mr. Ellert, you are president of the complainants, The Sanitary Reduction Works of San Francisco?

A. I am.

Q. 2. And have been for how long?

A. Since the organization of the company.

Q. 3. Which is about how long?

A. About three years now; between two and three years.

Q. 4. During that time how familiar have you been with the operation of the works?

A. Very familiar with the detail of the work.

Q. 5. The works are situated as described in the bill of complaint, over here in the southern part of the city? How often did you have to go there, or have you had to go there during your term of office?

A. Well, for a considerable part of the time I have been there two-thirds of the time, during the past two years, during the operation of the works.

Q. 6. Have you any personal knowledge of the cost of operation of these works?

A. Of the works itself, or the money invested over there?

Q. 7. The money invested in the works, taking the purchase of the land on which the works are situated.

A. The buildings and machinery, cost of patents, and every-
206 thing connected with the company, necessary to that enterprise—well I could not tell exactly; I suppose in the neighborhood of $170,000 or $180,000.

Q. 8. How could I get the exact figures?

A. Mr. Sparborough is the secretary.

Q. 9. The works as constructed, Mr. Ellert, are constructed for what purpose?

A. For the purpose of burning what I call the refuse of the city, the general refuse.

Q. 10. That is for the purpose of burning it, incinerating?

A. Incinerating it.

Q. 11. Have you machinery or works for what is called the reduction of garbage?

A. Not at all, sir.

Q. 12. That is, the refuse of garbage, and obtain by products from it?

A. No, sir.

Q. 13. And you say you have no such reduction from the appliance you have?

A. Originally, we started to build reduction works. It was expected that the board of supervisors would pass an ordinance. Originally we started with the idea of segregating the garbage of the city from the refuse—what I call the kitchen garbage. Reduction works are for reducing or boiling the garbage. But we found that we could not reduce refuse on account of the great amount of glass, crockery, tins and other stuff mixed with the kitchen refuse, so we returned simply to works for the purpose of burning.

Q. 14. Simply a crematory?

Q. 14. Simply a crematory?

207 Q. 15. And then — the operation of your works you simply destroy the garbage.

A. We simply destroy the garbage.

Q. 16. And get no by products from it whatever?

A. None, sir.

Q. 17. There are made parties to this suit, I think, about 125 Italians, who are designated as scavengers. Do you know them? I do not mean have you personal knowledge of them, but I mean do you know them as a body?

A. Yes, I know thempretty well.

Q. 18. Do you know whether these defendants—I am speaking now of the defendants other than The California Reduction Company—have interfered with your company in the delivery to your company of garbage and refuse matter?

A. Well, they have by diverting the carrying of it, or bringing it to the works there, and dumping it in other places; in other words, instead of obeying the ordinance, they dumped their garbage, they

dumped their general refuse that the franchise provided should come to us, wherever they could and whenever they could. Of course we have made a large number of arrests.

Q. 19. How long have they pursued that plan?

A. Well, practically ever since we started.

Mr. LEAMING: This question relates to the scavengers?

Mr. PIERSON: Yes.

208 Q. 20. Have you any means of knowing, or have you made a study of the question, as to the amount of garbage produced daily in San Francisco?

A. I have, sir.

Q. 21. Do you know, or have you made a study of the amount of garbage that has been delivered to the Sanitary Reduction Works?

A. I have, sir.

Q. 22. From that investigation, that study, what proportion of the garbage and refuse matter in this city has been diverted from the Sanitary Reduction Works?

A. Well, before putting up our plant, for the purpose of getting a basis as to what size of plant we should put up, we had a man employed to go over the dumps and keep tally as to the number of loads that were dumped there every day.

Q. 23. That is the former dumping places?

A. The former dumping places.

Q. 24. Under the former arrangement?

A. Under the former arrangement. There was an average there of about 370 loads dumped a day, and we figured that outside of these dumps—now, I am simply speaking of the dumps on the Potrero—that there was about 130 loads in addition to this that were dumped in the North Beach and Mission districts, on the Richmond road, and other places, making in all about 500 loads per day. At present we receive on an average I suppose, about 205 loads a day. I didn't get the exact average, but it runs 204, 205, 206 and 207 loads a day, sometimes as high as 209 loads.

209 Q. 25. Now, how long has that been the case, Doctor?

A. Well, that is two or three months. When we started the scavengers did fairly well. That is, they did not bring of course anywhere near the quantity that the city produces, but they did a great deal better than they have the last seven, eight and nine months. I suppose they are dumping outside to-day——

Q. 26. (Interrupting.) Not suppositions; that is not evidence.

A. Well, when I speak of a supposition, I am giving you my belief based on my special investigation that I made.

Q. 27. And the amount that you actually received.

A. And the amount that we actually received, drawing that deduction; that there is about perhaps 250 loads a day diverted from the works.

Q. 28. Now, taking that as a basis, Doctor, what amount of loss

has the Sanitary Reduction Works been subjected to by reason of that diversion by these defendants of that garbage.

A. Well, at the very lowest estimate it would amount to $2,000 a month. About $75 a day I figure it.

Q. 29. You started in operation about the 1st of November, 1897?

A. Yes, that is the 8th day of November, 1897.

Q. 30. For two or three months they brought a pretty fair amount of garbage to your works?

A. Yes, but they never did average more than 300 loads a day.

210 Q. 31. Now, could you not fix some point of time when you say this $2,000 a month commenced?

A. Well, I could safely say right from the beginning.

Q. 32. And that continued down to the commencement of this suit?

A. Yes, sir. Now, when you ask me that question, you speak entirely of garbage; I am speaking now of the refuse.

Q. 33. I am asking about garbage, and refuse matter described in order No. 2965, Complainants' Exhibit "A." Now, with making that agreement, your testimony is the same, is it?

A. Yes.

Q. 34. Under order No. 2965, Doctor, Mr. Sharon and his grantees were required to pay for a certain term two per cent. of their gross proceeds to the city and county of San Francisco. Has your company made this payment?

A. We have, sir.

Q. 35. When was the first one made, and what was the amount of it?

A. The first one was made, I think, in January. Just the date now I don't know exactly.

Q. 36. The first one was made—at least the board passed a resolution accepting it—on the 21st day of February, 1898, for $140.21. That is admitted, so we need not prove that. Now was there any other payment made under that franchise to the city?

A. Yes, sir.

Q. 37. When?

211 A. I think either the latter part of December, or the first part of January, whenever it was due.

Q. 38. What was the amount of the payment?

A. I think it ran $936 and some odd cents.

Q. 39. And that was accepted by the city?

A. Yes, sir.

Q. 40. By resolution?

A. By a resolution of the board.

Mr. PIERSON: We will produce a copy of that later on.

Cross-examination.

(By Mr. LEAMING:)

X Q. 1. You estimate, I understand, Mr. Ellert, that you receive at your crematory about half of the refuse of the city?

A. No, it don't average half, I think.

X Q. 2. Less than half?

A. Less than half.

X Q. 3. What goes with the other half?

A. How do you mean, what goes with the other half?

X Q. 4. What becomes of it?

A. Well the other half is dumped around the city, that is down at the Richmond district and on any vacant lot they come across in various places in the city. There are about four different places where they are burning, and there are opposition crematories where they are generating power and selling power in the neighborhood.

212 They bring paper, they bring old rags, they bring mattresses, and they bring more or less garbage mixed up with it, rags and general refuse of the city.

X Q. 5. And you estimate that they get about half of the garbage of the city?

A. More than half; about three-fifths.

X Q. 6. Do you estimate that very much is dumped on vacant lots?

A. Yes; considerable.

X Q. 7. Or is your principal loss from such factories as you term opposition crematories?

A. Well, I suppose the principal loss would come from those places, although there is a great deal dumped all over the city. The way I get my data from them as a large number of these people that are violating the ordinance.

X Q. 8. Then to form the data that you have given you have made your estimates from the reports that are made to you by others that have been employed by you to gather this data together?

A. Yes, people I have employed to get the data for me.

X Q. 9. You don't undertake to claim that this is original information of your own, based on your own personal observation?

A. Oh, not at all.

X Q. 10. It is simply an estimate derived from such information as you have gained from what is given you?

A. Yes, that is correct so far, and making a deduction from what the city produces *per capita* and the amount which was produced

213 before putting up our works, knowing what we receive, and those reports that we may get from different places where they are dumping around the city.

X Q. 11. Do you not at your works, or have you not at times, separated from the garbage that is brought to you such articles as are useful for the purpose of commerce, such as tins, glass, and bones?

A. Well, we have separated the tins, but as a profitable proposition I want to say that our tins are a very decided loss to us, because we cannot consume them in our furnaces.

X Q. 12. I don't think you have answered my question. Have you made such separation?

A. Why, certainly.

X Q. 13. Are you continuing to do so?

A. We are.

X Q. 14. Then such articles as you find useful in the garbage that is brought to you, — separate before you burn the balance, and you reserve that which is useful for commercial purposes?

A. Well, we separate a portion of it, Mr. Leaming. We don't take the time to pick a great deal out.

X Q. 15. You undertake to separate it as far as you can because it is a source of profit?

A. Yes, certainly.

X Q. 16. What becomes of the ashes that accumulate after incineration?

A. We fill up some vacant lots in that neighborhood.

X Q. 17. You dump these ashes upon vacant lots in the city, do you?

A. Yes.

214 X Q. 18. Are you not aware that the ordinance under which you are operating forbids such dumpage?

A. What is that?

X Q. 19. Are you not aware that the ordinance under which you are operating forbids such dumpage?

A. Not that I know of.

X Q. 20. Don't you know of any provision of the ordinance that forbids the dumping of ashes upon vacant lots?

A. I do not. I know of none; I have seen no ordinance that forbids it; there has never been any complaint when we have dumped plain ashes.

X Q. 21. You know of no provision of the ordinance that forbids the dumpage of ashes upon vacant lots?

A. Our franchise provides for the bringing of ashes to our works, but we never insist upon that.

X Q. 22. You do in fact dump the cinders and ashes that accumulate as a result of your incineration upon vacant lots in this city?

A. Yes, sir.

X Q. 23. That has been your constant practice and custom up to this time?

A. Yes, but we do not dump it without the authority of the party owning the property; that is, without permission, rather.

X Q. 24. You undertake to obtain permission of the owners of the property?

A. We do undertake to, and we do receive permission to do so.

X Q. 25. You aim to procure it in all cases?

215 A. No, you must not put the question that way, because you are trying to put me in the position of acknowledge that we do these things. If we could not get permission otherwise we would buy the permission. I will explain to you: For instance, take a block of property belonging to George Teller; he asks us to grade that block; it contains 12 or 14 acres. He makes a contract with us to grade the block, and we fill it in with cinders and ashes we get from our works, and we grade it under our contract.

X Q. 26. Then your crematory has in connection with its operation what are called incinerating furnaces?

A. Well, that is the proper designation of our works; it is an incineratory, not a crematory. Consequently we have incinerating furnaces.

X Q. 27. Your crematory uses as its fuel the garbage that it is incinerating, does it not?

A. That is the only fuel that we have, sir.

X Q 28. It is operated under a system that is designed to require no fuel save garbage?

A. Yes, sir.

X Q. 29. The garbage is deposited in the furnaces. I wish to ask you where, if you are able to state, the gases pass from this garbage as it is being consumed?

A. The gases are all consumed in the furnace.

X Q. 30. The gases are all consumed by the original furnaces?

A. In other words, there is a perfect consumption of gases.

216 X Q. 31. Now, my question was whether there was any auxiliary or additional furnace other than those in which the garbage is dumped, that is designed to consume these gases. That is what I mean by incinerating furnaces.

A. Yes, we have what is called a crematory furnace. This is properly called a crematory furnace. They are right next to the chimney, but we found there was no necessity for using them to dispose of our gases because we have employed Professor Price to go and examine the works thoroughly, and examine our furnaces thoroughly to see if there are any gases that escape from the original furnaces. He brought in a report that there were not, and that there was no necessity to use these other furnaces at all, that there was a perfect consumption of the gases.

X Q. 32. Then I understand that you have one separate crematory for gases, that was designed to consume the gases that come from the other crematory furnaces?

A. Yes, if it is necessary.

X Q. 33. How many of these furnaces are there?

A. I believe there are four.

X Q. 34. How are they operated when they are operated?

A. Just in the same manner practically.

X Q. 35. Are they not designed to burn coke?

A. Yes, you can burn coal in them,

X Q. 36. Coke, I said.

A. Yes, you can burn coke or coal.

X Q. 37. Did you say there were two?

217 A. I said four.

X Q. 38. And the purpose of this incinerating furnace—cremating furnaces you call them?

A. Yes.

X Q. 39. The purposes of these cremating furnaces is to consume such gases as may pass through the flues from the original incinerating furnace?

A. If it was necessary.

X Q. 40. If such gases go that far?

A. If such gases go that far.

X Q. 41. And you have discontinued the use of them because you have become satisfied that there are no gases that pass that far from the original furnace, then?

A. On the report of Professor Price.

X Q. 42. How long did you operate them?

A. Well, I think a month, or two or three months, or so.

X Q. 43. And what with?

A. Well, we did burn fuel a while, and then we saw that we need not use any fuel in them. They changed a *great* bar, I believe; I didn't keep much track of it.

X Q. 44. After you discontinued the use of the fuel you used as fuel garbage in them?

A. Yes, sir.

X Q. 45. What class of garbage?

A. Well, we used to use a good deal of paper in these furnaces and we burned a good deal of manure.

X Q. 46. You used that in place of coke?

A. Yes, sir.

X Q. 47. Why?

218 A. Well, simply because we got considerable fire from it, and it was an easy way to dispose of it.

X Q. 48. Because it was cheaper?

A. Yes, considerably cheaper.

X Q. 49. You found coke an expensive method?

A. Rather an expensive item; yes, sir.

X Q. 50. In the estimate you have made in connection with this crematory and the process of operation, are you able to state what proportion of the expense of operating your crematory would be chargeable to the operation of those crematory furnaces that were operated with coke?

A. Well, that would be a matter I think that would be——

X Q. 51. (Interrupting.) It would be a large proportion of the expense of operation, would it not? A large percentage?

A. Well, I don't know about that, Mr. Leaming, how much it would average.

X Q. 52. You are unable to estimate it, are you?

A. I could not estimate on that, no.

X Q. 53. Do you know what the cost of operating was?

A. At that time?

X Q. 54. Yes.

A. I think the cost was several hundred dollars a month for coke and coal.

X Q. 55. How long since you have operated these furnaces?

219 A. Well, we have operated them off and on for some time, up to the last few months.

X Q. 56. How long since you have operated them at all?

A. Well, now that is what I can't answer positively.

X Q. 57. Answer as nearly as you can.

A. Oh, well, the last few months; I would not say how long.

X Q. 58. Six months?

A. Possibly; in the neighborhood of that. Another additional reason why we did not operate them any longer is because the paper that was burned up would go up the chimney, and we wanted to stop anything of that kind going out of the works.

X Q. 59. In burning paper in them you found the paper would go up the chimney, not being entirely consumed?

A. Yes, because we have not got screens next to the chimney, and it is impossible to put screens there.

X Q. 60. That difficulty would not exist if you used coke, of course?

A. No, coke could not very well go up the chimney.

X Q. 61. You think about six months ago, you discontinued their use altogether?

A. Well, unless they have operated them when I did not know anything about it.

X Q. 62. Are you sure, Dr. Ellert that you used these furnaces or either of them within the past year?

A. That is 1898?

X Q. 63. Within a year from this date?

A. Oh, yes, I can remember that.

220 X Q. 64. You have not been using them with any degree of continuity within a year?

A. No, I know we have not.

X Q. 65. How much as a matter of fact have you operated—have you operated them at all continuously, or with any approach to such a thing as continuity after the first month or two of the operation of your crematory?

A. Well, I could tell you better—you had better have the superintendent on the stand. He could tell you more than I could.

X Q. 66. You would be unable to answer that question?

A. Yes, sir. *A.* I would not be able to answer it properly.

X Q. 67. Are you familiar with the construction, the detailed construction of the crematory?

A. Well, as much as I can by being there about a year when they were building the works.

X Q. 68. Do you know at what distance above the cremating

furnaces as you described them, the flues containing the smoke and such gases as there might be pass?

A. Above them?

X Q. 69. Yes, above the surface of the furnaces that you describe as cremating furnaces.

A. Well, it probably goes right in with them, in the cremating furnaces, the flue as it makes a turn around into the chimney there.

X Q. 70. Is it not a fact that the flue from the original furnaces, of the other, the cremating furnaces, passes over the surface of this *surface* as much as seven or eight feet above?

A. I think not.

221 X Q. 71. Are you certain as to that?

A. I told you just now I would not be certain about it. About that portion of it. It appears to me it practically comes right into contact with the furnaces, the flue does.

Redirect examination.

(By Mr. PIERSON:)

R. Q. 1. Doctor, you spoke about the product *per capita* in your cross-examination, or in your direct examination, I am not sure, "the *per capita* production of garbage in San Francisco." Explain what you mean by that.

A. Well, in all cities, of course, an estimate can be made of the amount of garbage that is produced *per capita*. For instance, San Francisco produces about one and one-half pounds *per capita*.

R. Q. 2. About one and one-half pounds per day to the population?

A. Yes, sir.

R. Q. 3. Now, you have also used the expression "opposition crematories." Do you mean any crematories put up for the purpose of incinerating garbage?

A. No, I didn't use the term in that sense.

R. Q. 4. You mean crematories that take this refuse matter from other scavengers to use it for steam power?

A. I don't know whether they use it for steam power or not. I don't know how they use it. I have never been in their places.

R. Q. 5. You mean crematories belonging to other parties?

222 A. I refer to opposition crematories, crematories that are set up in opposition, and that burn this stuff as against us.

R. Q. 6. You were asked about dumping ashes. Does your concern ever dump any ashes on any ground where they have no right to dump it?

A. Not at all, sir.

R. Q. 7. It is the ashes and clinkers that are the result of this incineration that are used for filling in land?

A. Yes, I would like to add to my testimony as regards these crematory furnaces. I want to state the fact that while the use of fuel and great expense attached to it is one reason, another reason

was on account of the fact that we found it impossible to place screens there. We have had three or four engineers figuring on it.

R. Q. 8. The purpose of the screens being to prevent the paper and other refuse from going up the chimney?

A. To stop materials going up the chimney by the draught of the furnaces.

Recross-examination.

(By Mr. LEAMING:)

R. X Q. 1. Would it not be practicable to use such screens provided you used coke or coal?

A. Oh, yes, there is no question about that.

R. X Q. 2. I will ask you, Doctor, whether the cinders, accumulated ashes from the large plants here, such as the electric light plant, are brought to your crematory?

A. Not from the electric light plants, no, sir.

223 R. X Q. 3. What disposition is made of them?

A. Well, they dump them over the old dumps, from what I understand. That is what the parties told me that had the hauling of them, some Italians. We have never made any effort to stop the dumping of ashes around, as we considered them clean ashes. They don't get mixed with garbage, ashes that come from steam boilers, there is no refuse matter mixed with them, and there is no sense in bringing them to the crematory so we have not made any complaints under the ordinance to compel enforcement of its terms in that respect.

Mr. PIERSON: I went to offer a certified copy of resolution No. 2233, 4th series, which refers to the last payment on account to the city.

(Marked Complainants' Exhibit "C.")

Further hearing adjourned to Tuesday, March 4, 1899, at 10 a. m.

WEDNESDAY, April 19th, 1899—10 a. m.

Counsel Appearing.

For complainants, Wm. M. Pierson, Esq.

For respondent California Reduction Company, E. B. Leaming, Esq.

Examination-in-chief of BEHREND JOOST, a witness called on behalf of defendant, California Reduction Company.

(By Mr. LEAMING:)

Q. 1. You are president of the respondent California Reduction Company?

A. I am.

224 Q. 2. You are the same Mr. Joost who testified at the instance of complainants?

A. Yes, sir.

Q. 3. Was the respondent, California Reduction Company, actively engaged in the pursuit of its business when interrupted by the restraining order issued in this action?

A. Yes, sir.

Q. 4. At the time the restraining order in this action was served, where were you?

A. I was at the corner of Mission Channel and Fifth streets, San Francisco.

Q. 5. Is the place that you name the yards and wharves of the respondent California Reduction Company?

A. Yes, sir.

Mr. LEAMING: Let the record show that I shall, in my examination, refer to the respondent California Reduction Company as the "barge company," for convenience. There is such a similarity of names that it is confusing.

Q. 6. On what day was the restraining order to which I have referred, served upon the barge company?

A. December 19, 1898.

Q. 7. And what were you doing at the time the restraining order referred to was served upon you?

(Objected to as irrelevant and immaterial.)

A. I was acting as superintendent.

Q. 8. And were you actively engaged in the superintendence of the work of receiving garbage upon the barges of the barge company?

(The same objection.)

225 A. I was.

Q. 9. About how many loads of garbage were received on that day by the respondent barge company?

(The same objection.)

A. Forty-six.

Q. 10. State to the court the manner or rather method employed by the barge company on that day in the receipt of this garbage?

A. We had two barges floating at Mission Channel, near the point I named before, Mission Channel, and the barges had sideboards on, and they also had an apron constructed from the wharf leading on to the barge, just like the apron is to the ferry here, the Market Street ferry, something similar. The scavenger wagons draws from the wharf on the apron and then on the barge; and we were loading the barge with garbage.

Q. 11. Prior to that time had the wharf to which you refer and the barges and the apron and other equipments necessary, been per-

manently constructed with a view to the receipt of garbage upon these barges?

A. Yes, they were.

Q. 12. What disposition was to be made of the garbage that was being received by these barges?

A. To be taken out of this city and county to San Mateo county, or some other counties, to be sorted out there, and put on a table on the wharf, and to be sorted, and all the ashes and other matters that could not be sold, to be made use of to fill in garden land with it; to fill in swamp land to make garden land of it.

226 Q. 13. And such useful articles as could be segregated from the load were to be applied to useful purposes?

A. Yes, sir.

Q. 14. Is that right?

A. Yes, sir.

Q. 15. You may state whether or not that was the method of operation that the barge company contemplated pursuing in its future conduct of its business?

A. Yes, sir.

Q. 16. In the business of the respondent barge company as that business was contemplated to be conducted, were any acts to be performed by the barge company of any character or nature within the city and county of San Francisco save and except the receipt of garbage and its transportation to a distant county?

(Objected to as leading.)

A. No, sir.

Q. 17. You may state whether the separation of useful parts of the garbage and such commercial products as were to be found in the garbage, was to be performed in this county or in a distant county.

A. In San Mateo county, or some other county.

Q. 18. Was it contemplated that any separation or treatment of garbage received by the barge company should be done within the limits of the city and county of San Francisco?

A. None whatever.

Q. 19. You may state whether or not the sole work and acts to be performed by the barge company as contemplated within the city and county of San Francisco comprises the receipt and transportation of garbage out of the county.

227 (Objected to as leading and immaterial.)

A. That is all, receipts.

Q. 20. Was this work performed upon the date upon which the restraining order was served, the first active work of that nature performed by the barge company?

A. Yes, sir.

Q. 21. It had just commenced active operation of its business?

A. About two hours.

Q. 22. Had any work been done prior to that time by the respondent barge company other than preparatory work in the completion of its mechanism and appliance for the performance of the transportation of the garbage?

A. No, sir.

Q. 23. You may state the character and nature of the garbage that was on that day received by the respondent barge company as to its condition, and as to whether it was dry or wet, and its general nature. Answer fully.

A. It was composed principally of stove ashes which come from houses, private houses; potato peelings, cabbage leaves, cauliflower leaves, sweepings of residences and offal of clothing, cast-off clothing, pots and kettles, syringes, and other things that you would throw in the ash barrel. Cans of all descriptions, oyster cans, sardine cans and other things that are generally used in a household; worn-out toys, syringes and rags; old boots and shoes and slippers, dish-rags; bones and offal from the table, may be a little bread; no swill that I seen, excepting it was buried up by ashes.

228 Q. 24. Any brass or iron, copper and zinc, or glass?

A. Yes, I made a note of that. I made a little note; and there were old rags.

Q. 25. You named them.

A. And cast-off clothing; I have also named them. Old copper, brass, zinc, lead, iron, cast-iron and wrought iron.

Q. 26. Did you name paper?

A. Well, I will come to that bye and bye. Felt hats of ladies and gentlemen, all kinds of felt hats, cast-off hats; curled hair, excelsior, knives and forks and spoons and bones, what we generally call soup bones; pretty large soup bones, and things that generally——

Q. 27. (Interrupting.) Did you include paper?

A. Yes, office waste paper and books, old cast-off books, writing books and paper boxes that come out of stores. Shirt boxes and collar boxes, and all things like that; heavy paper that they call refuse.

Q. 28. Have you given now a fairly complete statement of the general character of the garbage as far as the materials of which it was comprised are concerned?

A. Yes; there was some other things, of course; that is pretty near it.

Q. 29. Now, Mr. Joost, you may state as to the condition of the garbage that was received, as to whether it was dry or wet.

A. It was very dry. There might have been some tea leaves and coffee grounds, something like that, which caused it to be wet.

229 Q. 30. What became of that garbage after the restraining order was served upon your company?

A. It is at the barge, the way it was dumped.

Q. 31. By reason of the restraining order you were not able to remove it?

A. Yes, sir.

Q. 32. Is it there yet?

A. It is.

Q. 33. The barge still stands in the same place?

A. Yes, sir.

Q. 34. The barge upon which this garbage was received, and upon which the garbage in future was to be received, was upon the ground or floating in the channel?

A. Upon the ground or floating in the channel.

Q. 35. Next to the dock?

A. Yes, sir.

Q. 36. And the forty-six loads of garbage are still upon that barge, that were placed there on the day that you named?

A. Yes, sir.

Q. 37. At the time this garbage was received was it fermented and sour, or was it in a sweet condition?

A. It was in a sweet condition.

Q. 38. Has it since that day in any way soured of become offensive?

A. No, sir.

Q. 39. It has preserved itself through all of this time without artificial means?

A. Yes, through the ashes, principally.

Q. 40. During that time, that is from the day this garbage was loaded upon the barge until the present, have you been at the barge often enough to know whether it has at any time soured?

A. I have.

230 Q. 41. You may state what articles in the garbage that your company contemplated receiving it was anticipated to separate by reason of their commercial value.

(Objected to as irrelevant and immaterial.)

A. They wanted to separate it and sort it.

Q. 42. I asked you to state which articles, what class of articles.

(The same objection.)

A. Old rags, cast-off clothing, old baggings, and I didn't mention some others. All kinds of bottles, medicines bottle-, beer bottles and liquor flasks, soda bottles, and all that kind of bottles that would generally be cast in an ash barrel. Old felt hats, ladies' and gentlemen's cast-off boots and shoes and slippers made out of leather and rubber. Tin cans of all kinds what is used in a household, to get the solder off.

Q. 43. Soldered cans?

A. Yes, these small cans, coal-oil cans and other cans, pound cans.

Q. 44. Classify them generally, Mr. Joost.

A. Cans will cover everything. Old copper, brass, zinc, lead, iron, knives, forks and spoons; it might be some jewelry thrown into the ash barrel.

Q. 45. You may state whether you have investigated the subject sufficiently to ascertain upon behalf of the respondent barge company whether or not the articles, the class of articles that you have named, that will be received by that barge company with its
231 garbage, comprised any considerable proportion of the anticipated revenues of the operation of your company.

(Objected to as irrelevant and immaterial, as asking for an opinion of the witness.)

A. I have stated that matter.

Mr. PIERSON: That answers that question. We make the same objection.

The WITNESS (continuing): That a load containing three yards, that we would derive from the articles that I have mentioned, about twenty-five or thirty cents a load.

(By Mr. LEAMING:)

Q. 46. State whether or not the wagons upon which the garbage was brought to your barge and upon which your company contemplated in future receiving the garbage for transportation, were regularly licensed wagons of scavengers of this city?

A. Yes, they were.

Q. 47. Was any garbage brought to your company upon any wagons that were not regularly licensed scavenger wagons?

A. No, sir.

Q. 48. You may state whether or not your company, this respondent barge company, took precautions to see that this work was operated in a manner that was entirely within sanitary methods?

(Objected to as leading, immaterial and irrelevant.)

A. Yes, it was done in a sanitary manner; we even had covers over the barge, made canvas covers, so that there would be no nuisance created.

232 Q. 49. These covers were put on after the barge was loaded, for the purpose of transporting the material?

A. Yes, sir.

Q. 50. Was your company, by reason of the precautions taken, able to receive garbage and transport it to San Mateo county in such a manner that no garbage would fall in the water and no injury of any character be suffered by any persons?

(The same objection.)

A. Yes, sir.

Q. 51. Could the barges be loaded without any garbage falling in the water?

A. It could be loaded and not a speck of garbage would fall in the water.

Q. 52. And could they be unloaded in the same way?

A. In the same manner.

Q. 53. You may say how frequently the barges in the operation of the company's business would be removed from the wharf?

A. Every day. The day's loading would be removed from this city and county in the evening.

Q. 54. It was contemplated that the barge should be loaded during the day to be removed during the night?

A. Yes, sir.

Q. 55. Are you a householder in this city?

A. I am, sir.

Q. 56. Where do you reside?

A. I reside on the corner of Ashbury and 19th streets, San Francisco.

233 Q. 57. In this city and county?

A. Yes, sir.

Q. 58. Do you know whether the ordinance under which the complainant company is operating required that you as a householder shall send all of your garbage to the crematory?

(Objected to as irrelevant and immaterial.)

A. Yes, it requires every householder in this city and county to have ashes and offal from the house removed by the scavenger wagons.

Q. 59. Do you know whether the respondent company claims to be entitled to receive every bit of the householders' garbage in this city and county that accumulates on the premises?

(The same objection.)

A. Yes, sir. They claim that every householder in this city and county must have it removed to their crematory.

Q. 60. Do you send garbage that accumulates at your place, at your home, to the crematory, or deliver it to the scavengers?

(The same objection.)

A. No, sir; I have never done it.

Q. 61. None of it?

A. No, sir; I have got use for it.

Q. 62. What disposition do you make of it?

(The same objection.)

A. Ashes that I accumulate I use it for manure in the garden, for plants; the potato peelings, cauliflower leaves and cab-
234 bage I give to my cows; all the offal from the kitchen, like bread, dry bread and meat, I have got chickens to give it to.

Q. 63. You have what?

A. I use it to feed my chickens. The tin cans, my son makes use of them and melts them up and gets the solder out of them; the old clothes and things like that, we sell rags and old clothes.

Q. 64. So that in that manner you utilize for useful purposes all

ofo the accumulation at your house in the nature of garbage or refuse?

A. Yes, sir.

Q. 65. Do you know whether other householders do the same?

(Objected to on the same ground.)

A. My neighbors do the same way. They all have got cows, of course. They feed it to their cows, and other things to their chickens.

Q. 66. Was this garbage received by the respondent barge company on the day of the issuance of the injunction in this case in a condition where it was at all offensive?

(Objected to as leading, irrelevant and immaterial.)

A. No, sir.

Q. 67. To what extent was it mixed with ashes?

A. About three-fourths ashes.

Q. 68. Did you observe any swill?

A. No, sir.

Q. 69. No sour condition at all?

A. No; I noticed one lot had manure in it, horse manure.

235 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. You testified, Mr. Joost, on the day that this restraining order was served, your company was actively engaged in removing garbage as you have described?

A. Yes, taking garbage from the scavenger wagons, and loading it on our barges.

X Q. 2. You had been actively engaged on that for about two hours when the injunction was served?

A. Yes, sir.

X Q. 3. Now, prior to that two hours, how was your company actively engaged in removing garbage?

A. We were proceeding to get garbage from the scavenger wagons and loading our barges.

X Q. 4. No, prior to the two hours.

A. Prior to the two hours?

X Q. 5. Yes.

A. Well, we got ready for it.

X Q. 6. Now, what do you mean by getting ready for it? Describe what you have done.

A. Building, and enclosing the yard, and hanging doors. Building an office; building, constructing the wharf, building aprons, putting big side-boards on the two big barges, and other things necessary to go into operation of that kind of business.

X Q. 7. When did you lease the yard you speak of?

A. The yard was leased, it was rented on the 10th, one month prior to the same month.

236 X Q. 8. The 10th of November, 1898?

A. Yes, sir.

X Q. 9. How long a lease did you have?

A. We had it before; we didn't have to pay any rent until the 10th. We have had it before that.

X Q. 10. Well, the lease was in writing and began on the 10th of November, 1898?

A. No, it was not made in writing.

X Q. 11. You have a verbal lease?

A. There was a lease in writing but it was never executed.

X Q. 12. That was the one you spoke of as being taken in November?

A. Prior to that.

X Q. 13. When that was made why was it not executed in writing?

A. The arrangement was made for that in October.

X Q. 14. What part of October.

A. Of Thomas MaGee; I could not tell you exactly; Thomas MaGee, the real estate agent.

X Q. 15. And he was agent for whom?

A. For George F. Sharp's estate.

X Q. 16. Now, that arrangement was made sometime in October, 1898?

A. Yes, sir.

X Q. 17. Was that lease from month to month?

A. It was agreed that we were to have a five years' lease. The lease was written out in blank. It has never been executed. The land in question, this land of the George F. Sharp estate it had to go to probate on order of court; Judge Hunt, one of the superior judges is executor.

237 X Q. 18. Has the lease ever been executed?

A. They got leave from court to execute it. The lease has not been executed yet.

X Q. 19. When was leave granted by the court to execute the lease?

A. The lease was ratified by the court.

X Q. 20. When?

A. I could not say.

X Q. 21. Why didn't you execute it?

A. Well, we thought it was not desirable under the circumstances; we have been paying the rent from month to month.

X Q. 22. Then you are occupying the premises from month to month, are you?

A. Yes, sir.

X Q. 23. You have been since October 1898?

A. Yes, sir.

X Q. 24. What rent do you pay?

A. One hundred and forty dollars a month.

X Q. 25. Now, then, what was the first thing you constructed on that land, the first thing you did?

A. We built fences around it.

X Q. 26. Around the entire piece of land?

A. No, sir.

X Q. 27. How big was the piece you enclosed?

A. A little over half.

X Q. 28. How large a piece is half of that lot?

A. Well, the entire lot is ninety-one feet, eight inches by two hundred and seventy-five feet deep.

X Q. 29. What did you enclose of that lot?

A. A little over half.

238 X Q. 30. Half in depth, do you mean?

A. Yes, half in depth.

X Q. 31. Ninety-one feet, eight inches—about one hundred feet then?

A. No, no; more than that; it might have been ninety-one feet, eight inches by one hundred and fifty, or one hundred and sixty; maybe more than that.

X Q. 32. Now, when did you construct that fence?

A. I think we constructed that after we had the first month's receipt. That was in the beginning of October.

X Q. 33. In the beginning of October?

A. Yes, or latter part of October.

X Q. 34. What did you next construct there?

A. We built an office building.

X Q. 35. How large a building is that?

A. That contains about two rooms.

X Q. 36. How large is the building?

A. I think it is about fourteen by twenty-two, something like that.

X Q. 37. Fourteen by twenty-two? One story?

A. Fourteen by twenty-two, one story.

X Q. 38. Frame?

A. Frame, yes, sir.

X Q. 39. Now, what else did you construct on these premises?

A. Alterations of the wharf.

X Q. 40. There was a wharf there, was there?

A. There was part of a wharf.

239 X Q. 41. When did you commence to construct the wharf?

A. That was done in, I should judge, the latter part of November.

X Q. 42. Now, with the exception of those things that you have named, did you put any other improvements on the property?

A. We filled it in some.

X Q. 43. Filled in the land some?

A. Yes, and planked it. A portion of the yard was planked.

X Q. 44. This roadway and the aprons you spoke of?

A. Yes, sir, and some other planking.

X Q. 45. How much besides that?

A. Not very much.

X Q. 46. What was the cost of fencing that lot?

A. Well, I could not say. We had a lumber bill for the siding of the barge.

X Q. 47. I am talking about the fences now?

A. Well, I could tell better if I saw the bills. I can roughly estimate.

X Q. 48. How much did the frame building cost?

A. I think all that, the yard, fencing and buildings, with the lumber and everything did not exceed $1,000.

X Q. 49. Did it exceed $500?

A. Yes, I think so.

X Q. 50. This building that you speak of isn't finished inside, is it?

A. Oh, yes, it is.

X Q. 51. What do you mean, is it plastered?

A. It is wainscoted; that costs more than plaster.

240 X Q. 52. What is it built of, redwood?

A. Yes, sir.

X Q. 53. What was the cost of these improvements, did you say?

A. Over $1,000.

X Q. 54. Including the repairs to the wharf?

A. Including the repairs to the wharf, yes.

X Q. 55. What was the cost of the sides of the barges? Was that included in the $1,000 you spoke of?

A. No.

X Q. 56. What was the cost of that?

A. They cost about $300 apiece.

X Q. 57. Who was that paid for by? Warren & Malley, or by you?

A. Well, it was paid for by us.

X Q. 58. At what point of time were you ready to commence business, taking garbage out of San Francisco?

A. After three days prior to the time we took the garbage.

X Q. 59. Some time about the 16th of December?

A. Yes, sir.

X Q. 60. Why did you not commence to take garbage on that day?

A. Well, the apron that we had hung first, it didn't suit, it was not safe.

X Q. 61. Then you were not prepared to take garbage on the 6th?

A. Well, we could have taken it temporarily; but I wanted to have everything safe; then I had to buy tackels; they cost about $60 a pair.

241 X Q. 62. Now, there is a contract here in evidence between the barge company, as it is called, and certain scavengers. Were these scavengers notified that you would be ready for the delivery of garbage on any date prior to the 19th of December?

A. No, sir, they were not notified before.

X Q. 63. They were not notified before that?

A. No, sir.

X Q. 64. To whom did you give notice that you would be ready on the 19th to take garbage from San Francisco?

A. Well, we had a little contract——

X Q. 65. (Interrupting.) Now you can answer that question. To whom did you give notice?

A. I could not say; I didn't give notice to anybody.

X Q. 66. You did not? Who did?

A. I think the secretary, Mr. Clemishire.

X Q. 67. Who represented the scavengers as a body in that agreement?

A. Mr. Demartini, president of the Scavengers Protective Union, and Mr. Cagliari.

X Q. 68. I notice that the scavengers have signed by Guiseppi Figone "as trustee for above signers."

A. Yes, sir.

X Q. 69. Was he trustee?

A. He was trustee of a certain agreement, a certain deposit of money in the bank.

X Q. 70. Was he trustee of certain signers to that agreement?

A. No, sir, he was not.

242 X Q. 71. Then he had no authority to sign it as such?

A. He was trustee for certain things. A certain deposit was made in some bank.

X Q. 72. A deposit was made by the signers of this agreement?

A. Yes, sir.

X Q. 73. And he became trustee of that fund?

A. Yes, for the scavengers.

X Q. 74. Signers of this agreement?

A. Yes, sir.

X Q. 75. Do I understand you, Mr. Joost, that on the day this order to show cause was served, on the 19th day of December, that your company received 46 loads of garbage?

A. Yes, sir.

X Q. 76. Now, when you say "received" do I understand you to mean "deposited on the barge"?

A. Left on our barges.

X Q. 77. Left on the barges?

A. Left on the barges, yes, sir.

X Q. 78. How many loads were received that day additional to those that were left on the barge?

A. Not any, sir.

X Q. 79. Were not some taken back?

A. That were not received?

X Q. 80. Didn't they go inside your gate?

A. No, sir.

X Q. 81. Did every load that came inside your gate that day go onto your barge?

A. It went on the barge; some of them was outside the gate.

243 X Q. 82. But all those that were inside were loaded on the barge?

A. Yes, sir.

X Q. 83. What was the necessity, Mr. Joost, of building that apron across the wharf and onto the barge? Why could not the scavengers dump from the wharf on the barge?

A. Well, it was more convenient, and cost less to handle it. They could drive on the barge, the portion of the barge where they wanted to load, without handling the garbage.

X Q. 84. Do I understand you to mean that the scavengers could take a load of garbage and drive across that apron onto the barge and then dump that load of garbage? Drive through the garbage and dump it?

A. No, sir, that was not our intention. First we would cover the deck. You understand what a barge is?

X Q. 85. Yes.

A. It is flat like this table. First we would cover the deck over, dump it on the deck, probably about three feet deep they would dump it. It would be that high. (Showing.) After that was done, the apron would be attached to the big tackels, and we would pull it up, and then we throw planks on the barge and commence again another tier, and in this way we continue to load without handling it at all, you understand.

X Q. 86. Yes, you put a layer of garbage all over the deck of the barge to a depth of three or four feet?

A. Yes, to the depth of three or four feet.

X Q 87. Then you would lay planking on top?

244 A. Yes, sir.

X Q. 88. Then the wagons would drive on that planking and dump again.

A. Yes, sir.

X Q. 89. I think I have asked you this in my examination in chief: What was the capacity of those barges? I will ask you again.

A. The capacity of the barges? They would hold about 300 loads.

X Q. 90. How many tons do you reckon that to be?

A. Well, when you calculate it in tons, one of them barges will hold in tons, I should think, probably three or four hundred tons.

X Q. 91. That will be—300 loads will be equivalent to 400 tons?

A. It depends upon the size of the wagons and the leaves of the wagons, and things like that.

X Q. 92. That would depend upon the character of the garbage?

A. Yes, sir. Ashes are so light too. I should judge each load would contain about three quarters of a ton.

X Q. 93. Now, you state it was the intention of your company to

take this garbage down to San Mateo county or some other county. What was the intention of your company as to the particular garbage that was being taken on that day? Where was it to be taken to?

A. It was to be taken outside the city and county, to San Mateo county.

X Q. 94. To what point in San Mateo county was that to be taken?

245 A. Right on the swamps near the six-mile house, on the San Bruno road.

X Q. 95. On the swamp near the six-mile house on the San Bruno road?

A. Yes, near the six-mile house.

X Q. 96. What preparation had you made down there for receiving any garbage?

A. We didn't put up any expensive works.

X Q. 97. Did you put up any works?

A. No, sir.

X Q. 98. What did you intend to do with that particular garbage that was loaded on that 19th of December, 1898?

A. I have got 9 acres of land there. That is high land, and the canal goes right through it, a canal, a six-hundred foot canal, and it has got deep water, and I expected to dump it there that same day.

X Q. 99, What did you intend to do with that particular garbage that was loaded on that barge December 19th, 1898?

A. It was to be placed on that location.

X Q. 100. The place that you had a lease of?

A. No, it belongs to my relations; I have no lease.

X Q. 101. Who does it belong to?

A. My son.

X Q. 102. You had a lease to it, you say?

A. No, he gave me the privilege.

X Q. 103. He gave you the privilege of dumping this particular garbage at that point?

A. Yes, sir.

X Q. 104. Is your son interested in the California Reduction Company?

A. No, sir.

246 X Q. 105. Then you didn't make any arrangements at that time for having a table and separating out this garbage?

A. No, sir.

X Q. 106. Where did you intend to locate that work?

A. Right close by there.

X Q. 107. You mean on this same ground?

A. No, not on the some ground; right close by.

X Q. 108. Right close by where?

A. Close by that channel, that channel that comes in there.

X Q. 109. In San Mateo county?

A. Yes, sir.

X Q. 110. Near this piece of land that your son owns?

A. Yes, sir.

X Q. 111. This particular 46 loads of garbage that was put on to that barge December 19th, 1898, you say is still on that barge?

A. Yes, sir.

X Q. 112. And you say that from that time down to the present it has never been offensive in any way?

A. No, sir; not at all.

X A. 113. Has it become dry?

A. No, no more than when it was put on. Just the same, in the same state.

X Q. 114. Has that barge been covered since the 19th of December, 1898?

A. No, there has not been anything done to it.

X Q. 115. At no time since the 19th of December, 1898, has that barge become wet, or more moist than when it was put on?

A. There might be some rain fell on it, but it does not smell any more than it smelled at first.

247 X Q. 116. You say there may have been some rain fell on it?

A. Yes, sir.

X Q. 117. Has no complaint, Mr. Joost, ever been made about that barge remaining there with that stuff on it?

A. No, sir.

X Q. 118. You never heard of any such?

A. No, sir.

X Q. 119. Were you aware of the fact that your counsel applied to me, applied to Mr. Pierson, within a week after the 19th of December, 1898, for leave to remove that garbage on account of its becoming stinking and offensive?

A. Yes, sir.

Mr. LEAMING: The request was not made on the ground that it had become so, but that it might become so. That is the way I understand it.

(By Mr. PIERSON:)

XQ. 121. You testified that it was one of your designs in removing garbage from San Francisco, to have those barges covered with canvas?

A. Yes, sir; and the canvas that we made, it costs about $110 for each barge.

X Q. 122. What was the design of that, did you say?

A. Just in case there might be waste paper and things like that, so that it could not blow off the barge.

X Q. 123. So that if your barges were loaded with pieces of waste paper you could prevent them from blowing away by putting the canvas over them?

A. Yes, sir.

248 X Q. 124. It was not with a design of preventing any smell from the character of the load on the barge, was it?

A. No, sir.

X Q. 125. Not with that view?

A. No, that was not the thing.

X Q. 126. You did it for sanitary purposes, as specified?

A. Well, for the purpose of that paper would not fall in the bay of San Francisco.

X Q. 127. So that no paper would go over the barge into the bay?

A. Yes, sir.

X Q. 128. Did you fear that the paper would contaminate the waters of the bay? Is that the idea?

A. Well, we didn't like to have things blowing around, and at the same time, we wanted to save the paper, all we could get, to make use of it for its commercial value. We didn't wan't to lose any paper.

X Q. 130. Now you have testified that the order under which complainants claim in this case, requires all householders to send their garbage and refuse matter to plaintiff's works?

A. Yes sir.

X Q. 131. You are sure of that, are you?

A. Yes, that is what I understand.

X Q. 132. Who did you understand that from?

A. Well, I seen from your complaint that your franchise that you got from the city says that you must do it, that all householders must do it.

X Q. 133. As I understand you to testify, it requires that householders shall employ scavengers to do it.

A. Well, of course there is scavenger's wagons.

249 X Q. 134. And you understand that from the complaint in this case? That is where you got your idea?

A. Yes, I read the complaint.

X Q. 135. Not from your counsel?

A. No, I was served, of course, with the complaint.

X Q. 136. And what is the penalty, as you understand it, if a householder does not send his garbage to the complainant's works?

A. I expect they can have him arrested. I don't know as there is any penalty. They could get him to the police court, and have him arrested.

X Q. 137. For a householder not sending his garbage to the crematory?

A. Yes, sir.

Examination-in-chief of M. D. LEVENSON, a witness called on behalf of defendant, California Reduction Company, sworn.

(By the EXAMINER:)

Q. 1. State your full name.

A. M. D. Levenson.

(By Mr. LEAMING:)

Q. 2. Where do you reside, Mr. Levenson?

A. In San Francisco.

Q. 3. Where in San Francisco?

A. Well, on Geary street I live, between Post and Fillmore.

Q. 4. On Geary?

A. Geary, yes.

Q. 5. What is your business?

A. Well, my business is removing refuse, garbage and ref-
250 use. I have wagons that go around town and gather mostly from stores.

Q. 6. Your specialty is refuse, as distinguished from garbage?

A. Yes, sir.

Q. 7. Now, what do you refer to as "refuse," as distinguished from garbage?

A. Well, I consider garbage is such a thing as old meats or old fish, or ashes; not ashes exactly, but something similar, that families have thrown away. Of course, they throw away other things besides old meats and old fish.

Q. 8. Now what do you class as refuse?

A. Rufuse that I gather in my business, I can only tell you about my own business, of course, I have an idea about the scavenger business. It consists of twenty or thirty different articles. I have an agreement with paper mills in my business and I bale on an average of a ton or a ton and a half of old paper that I sell to the Crown paper mill.

Q. 9. One and a half tons a day.

A. A day, yes; and I sell it. I get so much a ton for it. After it is baled I ship it to the paper mill.

Q. Where do you procure it?

A. From the different houses, and different stores. Then of course, I realize on other articles. Such things as metals, zinc, copper, rags, sash, bottles, broken glass, and there is a good many things in the dirt that people have no idea what it means; it is not all dirt.

251 Q. 11. How long have you been engaged in that business Mr. Levenson?

A. Well, I started in 1892.

Q. 12. And have been engaged in that business ever since?

A. Yes, sir.

Q. 13. Some seven years?

A. It is about seven years, yes, sir.

Q. 14. Those articles that you refer to are collected by you or your men from stores and houses, you state, in the city and county of San Francisco?

A. Yes, sir.

Q. 15. Had you also at some prior time been engaged in the collection of garbage?

A. Yes, yes.

Q. 16. Such as you describe as garbage?

A. Yes, sir.

Q. 17. How much experience have you had in that?

A. A good deal; I have had a good deal of experience; yes, I know just what the whole business is, you know; garbage and refuse, of course I had a good many customers that I used to take garbage from, but since this crematory started they charge so much, you know, that I could not compete with them, so I had to give up these places that had the garbage.

Q. 18. And you simply retained those customers who have refuse?

A. Who have refuse.

Q. 10. Refuse that you described as distinguished from garbage?

252 A. Yes, sir. This crematory has charged me as high as $2.15 a load.

Mr. PIERSON: I move to strike that out as not responsive, incompetent, irrelevant and immaterial.

(By Mr. LEAMING:)

Q. 20. You may state Mr. Levenson, what rates the crematory charged you for such garbage as you took there.

(Objected to as irrelevant and immaterial.)

A. I think they charged me about forty cents a cubic yard. I think I have got proofs. I can prove that they have charged me fully forty cents a cubic yard.

Q. 21. From your experience as a gatherer of garbage and refuse do you consider yourself entirely familiar with the business, in all of its branches?

A. Yes, sir.

Q. 22. Are you from your experience familiar with the general character of garbage and also refuse of stores and houses in the city and county of San Francisco?

A. Yes, sir.

Q. 23. Are you familiar with such values as pertain to garbage and refuse in this city and county, as is received from the stores and households?

A. Yes, sir.

Q. 24. In your present business how many men do you employ?

A. I employ twelve now; eleven sometimes, and sometimes fifteen or fourteen, but it averages during the month about twelve a month.

253 Q. 25. And have you been employing the same number of men in your business for some years back?

A. Yes, I had more.

Q. 26. That fairly represents the magnitude of your busines, does it?

A. Yes, sir.

Q. 27. The employment of men to that number?

A. Yes, sir. Of course, sometimes I have twelve, or I have eleven, or ten, but the average as the work comes in is about twelve. When work comes in faster I put on more men.

Q. 28. You yourself do not engage directly in the business, except through your employees? In other words you do not perform manual labor?

A. I did when I first started in, I did, but not to-day. Now I do all my business through my men. Of course I follow up the business looking after it.

Q. 29. You superintend the business?

A. I superintend the business, yes.

Q. 30. Do you know whether The Sanitary Reduction Works, the complainants in this case, claim that they are entitled to receive and cremate all of this refuse that you collect?

(Objected to as irrelevant and immaterial, and calling for an opinion of the witness as to what the complainants claim.)

Q. 21. The question is, do you, or do you not? Do you know? Do you know whether they claim that they are entitled to receive this material?

254 A. Oh, yes, yes; decidedly. They had me arrested for——

Q. 32. (Interrupting.) Just answer the question. I say do you know?

A. I know, yes.

Q. 33. State to the court how you know that they make such a claim.

(Objected to upon the same ground.)

A. I know they had me arrested about ten or twelve times, and pulled me through the streets, and the policeman had my men taken out from the teams from the stable and arrested. Why, they just go for you, you know.

Q. 34. The complainants in this case have caused your arrest and the arrest of your employees for engaging in this business how many times do you say?

A. Well, I will have to look that up. I think surely about ten times, if not more.

Q. 35. Through complaints filed in the police courts?

A. Through complaints that they want everything I gather.

Mr. PIERSON: I move to strike out that testimony upon the ground that the witness is testifying as to the contents of a written instrument; and the best evidence is what he is charged with; his answer is not responsive to the question.

(By Mr. LEAMING:)

Q. 36. Do you know whether those arrests that have been made

of you and your employees have been arrests made at the
255 instance of The Sanitary Reduction Works, the complainants in this case?

A. Yes, sir.

Q. 37. Out of the number of arrests that have been made, have you been convicted?

(Objected to on the same ground, as calling for the contents of a written instrument.)

A. No, sir, never.

Q. 38. Not in any case?

A. Not in any case, except in one case that I had a teamster working for me, and they had him arrested, and this teamster I was paying the man $1.50 a day, and the case was pending in the police court. I demanded a jury trial. In the meantime they went and hired that man and paid him four dollars a day more, and this man while he was in their employ, he went to the police court and pleaded guilty, of course, and I had five dollars bail money up there, and I lost my five dollars.

Q. 39. And that is the only conviction that has occurred?

A. Yes. Of course, I couldn't get the five dollars back. I didn't know the case come up. My attorney didn't know it, and they simply fixed it with the teamster up there. Of course, the court took the five dollars.

Q. 40. Are you able to state, Mr. Levenson, of what the articles of commercial value of garbage in this city is composed?

(Objected to as incompetent, irrelevant and immaterial.)

A. Of what value, or what the articles consist of?

256 Q. 41. What articles have a commercial value?

A. Well, I really don't know of anything that has no value to it. My work has given me a large amount of knowledge of the business, and I really don't know of anything that is of no value. Why cinders and ashes you might figure even that people are willing to pay so much a load for it. There is a contractor here in town that is going to build a new postoffice here. He wants to make a contract with me that I should deliver all the cinders and ashes that they want. They have a basement down there where they want to use them. There is a value to ashes.

Mr. PIERSON: We move to strike that out as not responsive to the question; what the contractor wanted to make a contract for is not evidence.

The WITNESS: In fact there is a market for ashes and cinders.

(By Mr. LEAMING:)

Q. 42. Then in your judgment there is nothing that is valueless in garbage?

A. No, sir.

Q. 43. Or refuse?

A. Nothing that I know of; manure—a garden always wants manure; I don't know of anything that has no value.

Q. 44. Are you able to state, Mr. Levenson from your experience in business operations what the average value of a load of garbage is?

(Objected to as irrelevant and immaterial.)

257 A. Some loads are very valuable, and others are not worth as much.

Q. 45. State to the court what articles of value, or of principal value are to be found in garbage or refuse.

(The same objection.)

A. Well, there is at least, in my judgment, twenty-five or thirty articles.

Q. 46. Name a number of them.

A. Well, I will start in with manure, ashes, cinders, tin cans, paper, rags, bottles, sacks, and all kinds of such things, copper, wire, zinc, brass, lead, bones, and all kinds of fish. Of course, swill men, they pay for it. We buy it right along for them. I really don't know of anything that has no value. I don't know anything.

Q. 47. And in the garbage or refuse that you gather, you may state whether you utilize all of these articles?

A. Yes, sir.

Q. 48. What do you find is the average amount that you can utilize from a cubic yard of garbage. Make it a load instead of a cubic yard, and then describe the size of the load.

A. I should judge a load—of course as I said before, there are some loads worth more than others, but on an average I would surely make it about thirty-five cents a load anyhow.

Q. 49. Then you think that 35 cents a load is not an overestimate upon the average of the garbage of this city?

A. I would like to get a contract for that.

258 Q. 50. You would like to buy it at that rate, would you?

A. Yes, sir.

Q. 51. At that rate you could make a profit out of it?

A. A pretty good profit; yes, a pretty fair profit.

Q. 52. What do you refer to as a load in quantity?

A. Well, the average loads of garbage in this town are about three cubic yards on the average.

Q. 53. And it is upon three cubic yards that you base your estimate of thirty-five cents.

A. Yes, because there is such a thing as shavings, wood, excelsior and straw ticking, and all such stuff. There is a lot of people that burn this stuff, and are glad to buy it at two and four bits a load, and use as fuel in machine shops.

Q. 54. What do you get for the paper that you collect and sell?

A. I get five dollars and seventy-five cents a ton.

Q. 55. What do you get for bones?

A. Do you mean bones that are shipped in from the country?

Q. 56. Yes.

A. Well, there is bones coming in from the country and bones going out in the country. There is different prices. We get a couple of cars in every day of bones. Sometimes I buy some; there is bones shipped out of here a good many times.

Q. 57. Then as I understand you, you also buy bones from the country district for the purpose of selling again?

259 A. Well, sometimes; not always. Sometimes maybe once or twice in a year that I will buy some bones, just for a speck.

Q. 58. Refuse bones that have accumulated in the country, you have them brought in?

A. Yes, farmers send them in. People here in town many times they just buy bones in the country and ship them here and they sell them over again and send them out here.

Q. 59. My question was what bones are worth that accumulate here in San Francisco in the garbage. What do you sell them for?

A. Well, the price is twelve dollars a ton, but of course, I get sometimes ten dollars and nine dollars according to the market. If there was lots of bones, of course the wholesalers have got the benefit, but the average of them is about twelve dollars a ton; they run as high as sixteen dollars.

Q. 60. What is white glass worth that comes in the garbage?

A. White glass we get thirty-five cents a hundred.

Q. 61. What is copper worth?

A. It has advanced; copper has advanced to about seventeen cents a pound.

Q. 62. Zinc?

A. Zinc is about four and one half cents a pound; or five cents.

Q. 63. Iron.

260 A. Iron is worth about fourteen dollars a ton. It has advanced, and it has been higher and lower. It fluctuates in the market.

Q. 64. Are all of these articles articles of standard commercial value for which there is a ready market?

A. Yes, the most of them, as soon as you deliver a load you get your money.

Q. 65. During the past seven or eight years that is the business you have been engaged in?

A. I am not the only one; there is hundreds of people in this business. There is junk shops and regular places. People that are worth half a million dollars in the business, buying and selling.

Q. 66. What are bottles worth?

A. Well they average from one-fourth cent to as high as three cents for bottles.

Q. 67. Are you a householder?
A. Yes, with a large family.
Q. 68. At your place does garbage and refuse accumulate?
A. Yes, sir.
Q. 69. What do you do with that?
A. I employ a scavenger and he comes to my house two or three times a week and takes it away.
Q. 70. Takes it to the crematory?
A. Takes it to the crematory, yes.
Q. 71. Do you or not separate it, take the things of value out of it?
A. No, I do not.
Q. 72. Why don't you?
261 A. Well, it is such a small quantity, you know, it doesn't pay to take out a piece of rag, or a little bone or something. The scavengers, I think, of course, take some of it out. I don't. It is their business.
Q. 73. At any rate the garbage at your house goes to the crematory?
A. Yes, the scavenger takes everything in the barrel. Of course, my wife throws away some things, sometimes glass or bottles or bone. Of course, the scavengers take that.
Q. 74. But you have not been in the habit of utilizing such garbage as is thrown out at your house?
A. I didn't catch that question.
Q. 75. I say you have not been in the habit of making any use of it?
A. No, sir, it is not a sufficient quantity, you know.
Q. 76. That would not be the case, however, with a hotel. Their garbage that would accumulate would be more of an item.
A. Oh, yes. Hotels throw away lots of stuff, lots of stuff.
Q. 77. You stated that while you were in the general scavenger business in gathering all classes of garbage, you took it to the crematory and paid them for burning it, I believe?
A. Yes, sir.
Q. 78. You stated that they had overcharged you, I believe?
A. Yes, sir.
Q. 79. Now, state to the court fully and distinctly what the facts were as to that.
262 (Objected to as incompetent, irrelevant and immaterial.)
A. Well, they simply charged me whatever they pleased. I had my wagons measured and fixed the amount that my wagons will hold, and it will be about five cubic yards; and the crematory has charged me as high as ten and a half and ten and three-quarters cubic yards.
Q. 80. Have you with you any receipts or bills?
A. I have one bill, the last bill I have.
Q. 81. Have you it with you?
A. Yes, sir.

Q. 82. Will you produce it?

A. Yes, I only took it out, but I have paid five, six or eight.

Q. 83. Will you state to the court wherein there are any overcharges in the bill which you now produce? I will ask to have it marked Respondents' Exhibit No. 1. Explain to the court wherein there are any overcharges in the bill which you have before you.

(Marked Respondents' Exhibit No. "1.")

A. I have not got all my bills with me. They have charged me different prices. They have charged me sixty-eight cents a load, and sixty-five cents a load.

Mr. PIERSON: We object to that unless the bills are produced, showing that they have been paid.

(By Mr. LEAMING:)

Q. 84. Go on and state what has been charged, whether you have the bills or not.

A. This bill that I have is two dollars and fifteen cents a load.

263 Q. 85. Which would make about how much a cubic yard?

A. About forty cents.

Q. 86. You may state whether or not as a rule you were overcharged by them.

(The same objection.)

A. Yes sir.

Q. 87. Or whether you simply refer to certain occasions.

A. No, this bill here, they have forced this bill on me, by making me pay that amount of money, but I have never paid this amount. They forced that bill on me, and tried to sue me and attach me and different things, but I have not paid this amount, two dollars and fifteen cents. I have not paid it; I have refused to pay it, and by forcing it they found out they could not do so and they simply compromised.

X Q. 88. Compromised at a less rate?

A. Compromised at a less rate, yes; I have the other bill, too, the compromise bill and this bill.

Q. 89. Well, I think, Mr. Levenson, you had better get all of your bills. I had not intended to go into this branch of the case today. You had better get your bills and be examined on this point at another time. State whether you saw the garbage that was delivered to the respondent barge company on the 19th day of December, 1898.

A. Yes, sir.

Q. 90. You had it upon the barge?

A. Yes sir.

Q. 91. Was it dry or wet garbage?

264 A. It was not wet, it was dry; garbage is only wet in the rainy season.

Q. 92. It is wet when it rains all day?

A. It is wet when it rains all day, of course; the barrels get wet. The barrels as a rule stand out in the yards and porches and of course they get wet, but if it don't rain, garbage is always dry more or less.

Q. 93. State whether or not the garbage that was delivered to the respondent barge company on the 19th of December, 1898, was garbage of the general class of that which you have referred to in your statement as to the average values of garbage.

A. Yes, sir.

Q. 94. The same general kind?

A. Yes, sir.

Q. 95. And of about the same value?

A. Yes, I went down there a couple of days ago and looked at that garbage and there was a lot of boys picking on the barge, carrying away glass and stuff that they picked out.

Mr. PIERSON: I move to strike that out as not responsive to the question.

(By Mr. LEAMING:)

Q. 96. You are a stockholder of the respondent barge company?

A. Yes, sir, I became one a little while ago.

Q. 97. But you have no active management in it?

A. No, sir.

Q. 98. Mr. Joost has been the manager so far as its operations were concerned?

A. Yes, sir.

265 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Were you a party to the agreement between certain scavengers and the California Reduction Company in evidence here, marked Complainant's Exhibit "D"?

A. Do you mean with the scavengers?

X Q. 2. The scavengers and the barge company. Were you a party to that agreement?

A. No, not with the barge company. With the scavengers.

Mr. PIERSON: That is the agreement made the 22d day of November, 1898. I will ask to have it marked Complainant's Exhibit "D" and copied into the record.

(Note by stenographer.—The document referred to will be found copied into this record, commencing on page 6.)

X Q. 3. Are you a party to that agreement marked Complainant's Exhibit "D"?

A. I signed a paper with the scavengers; I don't see my name there. I know I signed something of that nature. I don't see my name there. Maybe they took my name out. It is not there.

X Q. 4. Then you don't find your name attached to that agreement, Complainant's Exhibit "D"?

A. No, sir.

X Q. 5. Did you sign an agreement between the California Reduction Company on the one part and certain scavengers on the other?

A. Yes, sir.

266 X Q. 6. And it is not the agreement now shown you?

A. No, sir, that is, I don't see my name there. I am looking for the names and I don't see my name there.

X Q. 7. What are the numbers of your scavenger wagons?

A. The numbers of the scavengers?

X Q. 8. What are the numbers of your scavenger wagons?

A. We have not got the number with them.

X Q. 9. Don't you know the numbers of your wagons?

A. No, I don't carry them in my head. I pay a license on them.

X Q. 10. How many wagons have you?

A. There are three wagons.

X Q. 11. And you don't know the numbers of these wagons; the license numbers?

A. I don't remember; they are long numbers; they are long numbers something like 15,000, and some of them 16,000.

X Q. 12. I call your attention now to the signature attached to this agreement; it does not seem to be very plain. I will have to point it out. I ask you whether that is your signature?

A. Oh, yes, yes; that is right; that is right. You see the wagons go by the number- 4, 5 and 6. That is the license number that I put on. That is the number- all right.

X Q. 13. You signed the number- of your wagons, 4, 5 and 6?

267 A. Yes, the number- of my wagons, but not the license numbers. I call my wagons by numbers, you know.

(By Mr. LEAMING:)

X Q. 14. Then you do find that you were a party to this agreement?

A. Yes, that is my signature. I didn't see it at first. I know I signed it.

(By Mr. PIERSON:)

X Q. 15. During what months was it that you were arrested ten or twelve times that you referred to?

A. I really don't know; I will tell you what months. I think they started in arresting me about February or March or April or May of last year.

X Q. 16. February, March, April or May of 1898?

A. 1898, yes, sir.

X Q. 17. When was this teamster of yours arrested whom you say plead guilty?

A. He must have been arrested in March or April.

X Q. 18. March or April, 1898?

A. March or April, 1898, yes.

X Q. 19. What was his name?

A. His name is Herman Broukman.

X Q. 20. What was the number of the wagon he drove?

A. I can't tell you the number of the wagon just now.

X Q. 21. One of the three you now have?

A. One of the three, yes, sir.

X Q. 22. One of those numbered 4, 5 and 6 as described in this agreement?

A. Yes, it must be one of those wagons, yes.

288 X Q. 23. And he was arrested you think about March or April, 1898?

A. Yes, it would be either March or April.

X Q. 24. When you spoke, Mr. Levenson, of the average value of old garbage being thirty-five cents per load of three cubic yards, do you mean that value of thirty-five cents is the value of the garbage?

A. Without the toll of the crematory, yes.

X Q. 25. Now, you testified that in your opinion a load of garbage which consists of three cubic yards is worth thirty-five cents?

A. Yes, sir.

Q. 26. Has a value of thirty-five cents?

A. Has a value of thirty-five cents?

Q. 27. Has it such value before it has been sorted out?

A. Before it has been sorted out, yes.

X Q. 28. Then one has to pay the cost of sorting, does he not?

A. Yes, there is an expense attached to it to a certain extent, yes, sir.

Q. 29. What is the expense of sorting out such a load of garbage consisting of three cubic yards?

A. Well, you must remember that I put the lowest figure, thirty-five cents.

X Q. 30. You said average?

A. I said the lowest figure was thirty-five cents. Now I take a load and I get three or four dollars for it.

X Q. 31. I understand you to say this was the average value. It is not, eh?

A. Well, I should figure, take, for instance, there is 200 289 loads a day, I consider that the 200 loads is worth $60 or $75. That is the way I figure.

X Q. 32. That would make an average of about thirty-five cents, wouldn't it?

A. Yes, sir.

X Q. 33. About what would be the cost of sorting out such a load of three cubic yards?

A. About ten cents.

X Q. 34. So you think there would be about a net profit of twenty-five cents?

A. Twenty-five cents and over.

X Q. 35. Now, are you not mistaken? Isn't your garbage worth a good deal more than thirty-five cents on an average?

A. The average as I said, I cannot go exactly on the average, but I have an idea when I see the stuff on the barge, that they dumped the first day, I had my mind made up that this barge company can realize a good deal out of taking the garbage. I just took a glance at it, and I was there a couple of times since, because I seen so many bottles lying there and glass and pipes, iron and stuff.

X Q. 36. Now, you are getting away from the subject. I want to know what you now think would be the average value of a load of average garbage consisting of three cubic yards.

A. What the load is worth?

X Q. 37. The average value? Take a thousand loads, if you please.

270 A. Well, I will still stick to my first price. It is worth thirty-five cents fully.

X Q. 38. That is the average?

A. That is the average.

X Q. 39. Now, you think the cost of sorting out the materials that have a value would be about ten cents?

A. I think the cost would be about ten cents.

X Q. 40. Out of three cubic yards?

A. Out of three cubic yards, yes. The more loads you have the less the cost would be.

X Q. 41. Do you employ a large force of labor?

A. Yes, I have men employed. When I have a good many employed I can cut my expenses and get more out of it.

X Q. 42. How much stock have you in the California Reduction Company?

A. I have one share.

X Q. 43. That is all you or your family have?

A. That is all I have got. I bought some stock, you know, for my family.

X Q. 44. How much stock does your whole family represent in that company?

A. They represent a few thousand shares.

X Q. 45. How many thousand?

A. Well, some of the stock don't belong to me, and, of course, I can't call it mine.

X Q. 46. But at any rate there is about 9,000 shares, 9,000 shares represented by you and your family.

A. Well, some of it by my friends.

X Q. 47. Who bought it under your suggestion?

271 A. No.

X Q. 48. Do you hold it for them?

A. Some I hold, and some I don't.

X Q. 49. How much do you hold for yourself and your family and friends?

A. Myself? I hold one share myself.

X Q. 50. For yourself and friends and family how much do you hold?

A. I have 9,000 shares that I advised people to invest in.

Further hearing adjourned to April 24, 1899, at 2 p. m.

MONDAY, April 24th, 1899—2 p. m.

Counsel Appearing.

For complainants, Wm. M. Pierson, Esq.
For respondent California Reduction Co., E. B. Leaming, Esq.
For respondents other than The California Reduction Co., R. T. Harding, Esq.

Testimony Produced on Behalf of Respondents Other Than the California Reduction Company.

Examination-in-chief of LUIGI FERRARI, a witness called on behalf of respondents other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. What is your full name?

A. Luigi Ferrari.

272 Q. 2. You are a scavenger by occupation, are you?

A. Yes.

Q. 3. How long have you followed that occupation?

A. Well, I am in the scavenger business for fifteen years now, over fifteen years now.

Q. 4. Where do you reside at the present time, Mr. Ferrari?

A. I live up between Green and Union, on Sonora street.

Q. 5. What is the number of your house?

A. Number 3.

Q. 6. Number 3, Sonora street?

A. Yes.

Q. 7. You are a householder?

A. Yes, sir.

Q. 8. You keep house there?

A. I keep house there, my own self.

Q. 9. You have a wife and family?

A. Yes.

Q. 10. You produce garbage yourself, do you?

A. Yes.

Q. 11. Have you got a cart, or horse and wagon with which you collect garbage in this city and county?

A. Yes.

X Q. 12. What is the number of your cart?
A. The new number?
Q. 13. Well, yes. Has it got a number at the present time?
A. Yes, I have got number 13. The old number was 17718.
Q. 14. Now, what is the new number? Where does the cart get that new number?
A. Number 13?
273 Q. 15. How does it happen to be number 13, can you tell?
A. What?
Q. 16. How does it happen to have number 13?
A. Well, I don't know.
Q. 17. Is that the number given to it by the license collector?
A. That is it.
Q. 18. The number given by the license collector?
A. Yes.
Q. 19. Now, what was the old number?
A. 17,718.
Q. 20. Now, was that also a number given to it by the license collector?
A. 13?
Q. 21. No, the old number.
A. The old number.
Q. 22. That was given to it by the license collector of the city and county of San Francisco?
A. Yes.
Q. 23. And when you paid your license you were given a receipt, were you?
A. Yes.
Q. 24. Would that receipt have the number of your cart on it?
A. Yes.
Q. 25. Formerly that receipt used to be for 17,718, was it?
A. Yes.
Q. 26. And now for number 13.
A. 13.
Q. 27. Was that wagon ever measured by the city and county surveyor?
A. Yes.
Q. 28. How many cubic yards of space is there in the cart according to that measurement?
A. Well, when my wagon is chuck full it measures three and a quarter yards.
274 Q. 29. That is right up even with the top of the box?
A. Yes, even; just level.
Q. 30. Are there any extension boards for putting on your cart that go above that?
A. I have got boards, side boards, and when I put them on there is just three yards and a quarter.
Q. 31. When you have all the side boards that you have got on, then at the top it holds three yards and a quarter?

A. It holds three yards and a quarter.

Q. 32. Have you got a memorandum there of the loads of garbage that you delivered at the works of the Sanitary Reduction Company?

A. Yes. (Produces.)

Q. 33. This is a memorandum of loads that you have taken lately?

A. Yes, a load every day.

Q. 34. Does this memorandum show whether you took a load there on the 3d of April of this month?

A. Yes,

Q. 35. How many yards of garbage did that load contain that you took to the works of the Sanitary Reduction Company on April 3d, 1899?

Mr. PIERSON: We object to the witness reading from any memorandum that he has made.

A. Two yards and a quarter.

(By Mr. HARDING:)

Q. 36. I want to ask the witness: Did you make this memorandum at the time when you delivered these loads each day?

275 A. I put it down on each load. I went down and dumped my load and went out to the crematory and I put it down myself. I put it down myself what I have. Two yards and a quarter what I have.

Q. 37. The memorandum that you are testifying to, then, was made out when you delivered your loads?

A. Yes.

Q. 38. Did you deliver a load of garbage to the Sanitary Reduction Works on April 3d, 1899?

A. Yes.

Q. 39. How many cubic yards did that load contain?

A. Two yards and a quarter.

Q. 40. What did you pay for having that hauled to the crematory, to the works of the Sanitary Reduction Works?

A. I paid seventy-five cents.

Q. 41. When did you deliver the next load there?

Mr. PIERSON: We object to the witness reading from a memorandum book, and I wish the reporter to note that the witness reads from a book in answer to these questions.

Mr. HARDING: What are the grounds of the objection?

Mr. PIERSON: On the ground that he cannot make his memorandum book evidence in this case?

(By Mr. HARDING:)

Q. 42. When did you deliver the next load there?

A. On the 4th.

Mr. PIERSON: Again I object that the witness is reading from his memorandum-book.

276 (By Mr. HARDING:)

Q. 43. How many cubic yards did that load contain?
A. Two yards.

Mr. PIERSON: Again I object to the witness reading from any memorandum book in answer.

(By Mr. HARDING:)

Q. 44. How much did you pay to the Sanitary Reduction Works for receiving that load of garbage?

(The same objection.)

A. (Reading:) Seventy-five cents.
Q. 45. When did you take the next load to the Sanitary Reduction Works?

Mr. PIERSON: Again I object to the witness reading from his memorandum-book.

(By Mr. HARDING:)

Q. 46. The next day, the 5th?
A. Yes.
Q. 47. How many cubic yards of garbage did that load contain?

(The same objection.)

A. (Reading:) Two yards.
Q. 48. How much did you have to pay for having that cremated?

(The same objection.)

A. (Reading:) Sixty-five cents.
Q. 49. Did you deliver a load on the 6th?
A. Yes.

Mr. PIERSON: Again we object to the witness reading from his book.

A. I guess I can't remember so long time I put it down
277 on the book. I put it down on the 6th, three yards.

(By Mr. HARDING:)

Q. 50. Did it contain three yards of garbage, the load of the 6th?
A. Yes, and I pay one dollar.

Mr. PIERSON: Again I object to the witness reading that from his memorandum-book. The witness is reading it from his memorandum-book.

The WITNESS: On the 7th I pay eighty-five cents, two yards and a quarter.

(By Mr. HARDING:)

Q. 51. You paid eighty-five cents for two yards and a quarter. When did you deliver the next load?

(The same objection.)

A. (Reading:) On Saturday.

Q. 52. April 9th.

(The same objection.)

A. (Reading:) On the 9th—on the 8th, the first load I pay for one yard and three quarters, I pay eighty-five cents.

Q. 53. Did you deliver two loads that day?

A. Yes.

Q. 54. How much was the next load?

(The same objection.)

A. (Reading:) The next load was one yard and three quarters, sixty cents. First load I pay sixty cents and the second load I pay fifty-five cents.

Q. 55. When did you deliver the next load?

278 (The same objection.)

A. (Reading:) On Monday.

Q. 56. April 10th?

A. On the 10th.

Q. 57. How much garbage did that contain?

(The same objection.)

A. (Reading:) Two yards and three quarters, ninety cents.

Q. 58. That means that you paid ninety cents to have it received by the Sanitary Reduction Works for cremation?

A. Yes.

Mr. PIERSON: I wish to make an additional objection to this testimony as incompetent, irrelevant and immaterial, and move to strike it all out upon this ground.

(By Mr. HARDING:)

Q. 59. Did you deliver a load at the Sanitary Reduction Works on the 11th of April of this year?

Mr. PIERSON: Again I object to the witness reading from his memorandum-book?

A. Yes.

(By Mr. HARDING:)

Q. 60. How many yards did that load contain?

(The same objection.)

A. (Reading:) Two yards.

Q. 61. How much did you pay for cremation?

(The same objection.)

A. (Reading:) Sixty-five cents.
Q. 62. Did you deliver a load on the 12th of April, this month?

279 (The same objection.)

A. (Reading:) Yes.
Q. 63. How many yards, cubic yards, did that load contain?

(The same objection.)

A. (Reading:) One and three-quarters; fifty-five cents.
Q. 64. Did you deliver a load on the 13th of this month?

(The same objection.)

A. (Reading:) Yes.
Q. 65. How much garbage did that load contain?

(The same objection.)

A. (Reading:) Two yards and three-quarters; eighty-five cents.
Q. 66. Did you deliver a load on the 14th of this month?

(The same objection.)

A. (Reading:) Yes, I did.
Q. 67. How much did that load contain on the 14th?

(The same objection.)

A. (Reading:) Two and three-quarters; seventy-five cents.
Q. 68. Did you deliver a load on the 15th?

(The same objection.)

A. (Reading:) Yes.
Q. 69. How much garbage did that load contain?

(The same objection.)

280 A. (Reading:) Two yards and a half; ninety cents. On the same day a load a yard and a quarter, eighty-five cents.
Q. 70. On the 16th did you deliver any garbage?

(The same objection.)

A. (Reading:) Every day, yes.
Q. 71. How much for that load?

(The same objection.)

A. (Reading:) Two yards; sixty-five cents.
Q. 72. On the 17th?

(The same objection.)

A. (Reading:) On the 17th two yards; seventy cents.
Q. 73. On the 18th?

(The same objection.)

A. (Reading:) On the 18th, seventy-five cents.
Q. 74. On the 19th?

(The same objection.)

A. (Reading:) On the 19th, two yards; seventy-five cents.
Q. 75. Did you deliver any on the 20th?

(The same objection.)

A. (Reading:) Two yards, seventy-five cents.
Q. 76. Did you deliver any on the 21st?

(The same objection.)

A. (Reading:) Two yards, sixty-five cents.
Q. 77. Did you deliver any on the 22d?

(The same objection.)

A. (Reading:) Yes, two loads; the first load, two yards, sixty-five cents; the second load, one yard and three-quarters, sixty
281 cents. I didn't put it down at that time; I left my book at home. I put these two yards. I put this two yards and a quarter; I pay sixty-five cents.
Q. 78. What was that? Two yard- and a quarter?

(The same objection.)

A. (Reading:) Yes, I pay sixty-five cents.
Q. 79. Now, I want to ask you about that book. All the entries in that book you made yourself, did you?
A. Yes.
Q. 80. And you made them at the times that you delivered garbage at the crematory?
A. Before I get into the crematory I measured my stuff.
Q. 81. Now, the wagon that you use in delivering this garbage has a graduated scale on it so that you can tell how much garbage there is in it?
A. Yes.
Q. 82. Who put that scale on your wagon?
A. The city and county surveyor.
Q. 83. You took the wagon to the city and county surveyor to have it measured for that purpose?
A. Yes.
Q. 84. These yards that you have testified to of garbage contained in the wagon were delivered by you at the crematory, were measured by that scale put on the wagon by the city and county surveyor?
A. Yes.

Cross-examination:

Mr. PIERSON: I move now to strike out all of this evidence as to the amounts paid by the witness, upon the ground that such
282 evidence is incompetent, irrelevant and immaterial, and has consisted chiefly from the witness reading from a memorandum-book.

X Q. 1. Did you ever keep any memorandum-book, or memorandum of loads delivered by you but the one that you now produce? Did you ever keep one but this one?

A. Yes.

X Q. 2. Where is that book?

A. I don't understand very much what you say to me. I can't talk very much English.

X Q. 3. Is this the first time you ever kept a memorandum of the loads that you delivered at the Sanitary Reduction Works?

A. Yes.

X Q. 4. And this is the only book that you ever had?

A. Yes, I had some old bills, and I throw them away.

X Q. 5. But you never kept a memorandum-book before?

A. No, because it would not pay.

X Q. 6. The payments that you testified you made as shown by this book were on measurements made by the Sanitary Reduction Works in its boxes?

A. My box is just as good as his box. (X Q. 6. read.) There is no use to measure his box because if I measure his box and it is coming to me twenty-five cents he give me five cents, and he says no use keep a man over there to measure my stuff for nothing. He says, "I have to pay for keeping men working to measure stuff upstairs in his box. Suppose there is coming to me thirty cents, he give me fifteen cents. If it is coming to me fifteen cents, he give me only five cents, and he want the stuff loose. If I
283 get a piece of can tin, something like that, he just run it round in the corner and a few pieces of paper, he call it a cubic yard. He say measuring his boxes he make me pay for his time, so I leave it alone. I pay what he charge me. I say all right, and I get through quicker, to save time; I have to stand there so long before I can't measure my stuff. Sometimes I have to stand there about fifteen or twenty minutes or half an hour. Sometimes there come about ten or twelve wagons one after the other before I could measure. I have to stand around there so long a time.

X Q. 7. So the payments that you have testified to were made according to the measurements of the Sanitary Reduction Works? Yes or no.

A. I don't understand very much.

X Q. 8. You have sworn here to making payments on various days in April of this year. You have, have you? Will you answer my question? You have testified to making payments on the 3d,

4th, 5th, 6th, 7th, 8th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22d and 24th days of April, of this month.

A. Yes.

X Q. 9. Were these payments made by you according to measurements of your garbage made by the Sanitary Reduction Works?

A. He don't measure. I deliver, he just look at the wagon, and says "so much" and I will pay so much.

X Q. 10. Did you make these payments according to measurements at the Sanitary Reduction Works?

A. According to what he said. I don't understand very much.

284 X Q. 11. All of these loads that were delivered during the month of April were measured in the boxes of the Sanitary Reduction Works?

A. No.

X Q. 12. Which of them were?

A. Just on the front of the door he say "so much" I will pay so much.

X Q. 13. Were any of the loads during the month of April measured at the Sanitary Reduction Works?

A. Sometimes.

X Q. 14. How many of them were?

A. Well, I don't know, not on this month.

X Q. 15. Then none of these loads of stuff in April were measured at the Sanitary Reduction Works?

A. No.

X Q. 16. Did you ask to have them measured?

A. No.

X Q. 17. There are boxes there in which to measure the garbage, are there?

A. Yes, sir.

X Q. 18. And you didn't ask to have your garbage measured in those boxes?

A. No.

X Q. 19. Are you one of the defendants in this case?

A. Yes.

X Q. 20. Did you sign an agreement with the California Reduction Company?

A. Yes.

Mr. PIERSON: I would like to have this book in evidence.

Mr. HARDING: I will offer it at the request of Mr. Pierson. (Marked "Respondents' Exhibit No. 2.")

285 Redirect examination.

(By Mr. HARDING:)

R. Q. 1. Did you have any garbage measured in the boxes of the Sanitary Reduction Works?

A. Yes, some time ago.

R. Q. 2. What did that measurement show?

A. That measurement—I go down in my wagon and I measure my stuff in his box; if I give three yards on his box they make me pay for three yards and a half, and four. He don't stand on his measure at all.

R. Q. 3. You would not stand on his measure?

A. No, they want soft stuff and anything, a piece of tin, bits of carpet, old chairs, something like that, they put them right on the corner, near the number, so that he can make a high measure and have so much.

R. Q. 4. When you bring a load to the crematory do they always ask you to have your load measured?

A. Sometimes I have no time to stand there and measure the stuff.

R. Q. 5. Answer the question. Did they ask you to have it measured?

A. No.

R. Q. 6. How do they fix their charges?

A. Well, they just come out at the door, and say "so much."

R. Q. 7. They look at your load do they?

A. They look at the load and don't measure it at all. They say "so much."

R. Q. 8. Then you have either got to pay them——

286 A. (Interrupting.) We have to pay, I give what he say.

R. Q. 9. You can go upstairs and have your load measured, can you if you are not satisfied?

A. No, if I want to measure my stuff I have to pay same amount what he ask me before I come in.

R. Q. 10. You have got to pay them money first before you can get into the crematory at all?

A. If I want to measure my stuff I have to go second story and ask if I want to measure again. If I want to measure I go upstairs on the boxes. He give me another check, I go upstairs and measure the stuff.

R. Q. 11. Then you can go upstairs?

A. You meet another man. You have got to get his permission to go upstairs and measure.

R. Q. 12. He gives you another check?

A. He gives you another check.

R. Q. 13. That check permits you to go upstairs?

A. To measure.

R. Q. 14. When you get upstairs what happens then?

A. Another man is there.

R. Q. 15. He does the measuring, does he?

A. Yes, he does the measuring and say where I have to dump it. He say "You dump in number 13," or "in number 14." One wagon goes number 13. Maybe my wagon goes number 15 or something like that.

R. Q. 16. That is, there are three or four different boxes there that have different numbers?

A. Yes.

287 R. Q. 17. And you are told to go and dump it into a certain box?

A. Yes.

R. Q. 18. Now when you dump your load into the box is it pressed down at all?

A. He can't press down very much because it ain't far away. He dump it right into a box.

R. Q. 19. He dumps it right into the boxes from the wagons?

A. Yes.

R. Q. 20. Is that tamped down at all?

A. No.

R. Q. 21. It simply falls in loose; he take a pitchfork and square them all over a little bit, not very much, just near the number.

R. Q. 22. Now, when you have measured any loads did you ever get anything back?

A. Yes, every time.

R. Q. 23. You always got some money back every time?

A. Every time I measure I get money back, 5, 10, 15, 20 and 25.

R. Q. 24. Do you get back as much as you think you ought to get back?

A. No, if I get back 15 cents it is coming to me 30.

R. Q. 25. That is, according to the measurement of the Sanitary Reduction Works you ought to get 30 cents and they will only give you 15?

A. 15.

R. Q. 26. Do they ever tell you why they only give you back 15 cents when really 30 is coming to you?

A. Sometimes he says, the superintendent, "Men work up-
288 stairs, men measure stuff," he says, "I can't keep men off the yard measuring one load of garbage for nothing. If I measure for a man he got to pay for it."

R. Q. 27. This man that measures, he tells you that you have got to pay for the measuring?

A. Yes, he tells me.

Recross-examination.

(By Mr. PIERSON:)

R X Q. 1. Who told you that you had to pay for the measuring?

A. Well, that man is upstairs just to measure stuff.

R. X Q. 2. What is his name?

A. I don't know; I can't tell you because every few weeks they change the man there.

R. X Q. 3. What did they charge you for measuring?

A. They didn't charge me anything, only in coming fifteen cents to me they give me only five.

R. X Q. 4. What kind of looking man was it?
A. He was kind of an old man.
R. X Q. 5. Tall or short?
A. Tall.
R. X Q. 6. Has he been upstairs all the time when you have been there?
A. No, he was there two months and a half. He was there before. Every few weeks they change their men frequently.
R. X Q. 7. Do you know the name of the man who told you that?
A. No.
R. X Q. 8. When did he tell you that?
A. He told me on the 28th last month.
289 R. X Q. 9. He told you on the 28th of March?
A. 28th, yes.
R. X Q. 10. Now, just tell me what he told you. Just use his own language. What did he say to you?
A. Well, he says to me, "I will measure your stuff, you will pay eighty-five," and he will give me fifteen back, coming to me. When he say, "I will pay ninety-five," and he give me fifteen cents back. I have to pay eighty cents. I will say "Coming to me fifteen cents" and he say "No, I won't stay here and work for you for nothing. I work for the Sanitary Reduction Works; I don't work for you." He keep money.
R. X Q. 12. That is what he said, was it? That is what he said on that subject?
A. Yes, what he said.

Examination-in-chief of D. PICETTI, a witness called on behalf of respondents other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. What is your full name?
A. D. Picetti.
Q. 2. Mr. Picetti, what is your business?
A. Scavenger.
Q. 3. How long have you been in that business?
A. Six years.
Q. 4. Where do you reside?
A. Where I live?
Q. 5. Yes.
290 A. I live in Sonora street, number 8.
Q. 6. Are you a married man?
A. Yes.
Q. 7. You keep house?
A. Yes.
Q. 8. You produce garbage yourself?
A. Yes.

Q. 9. You take your garbage to the Sanitary Reduction Works crematory?

A. Yes.

Q. 10. You gather garbage in the city and county of San Francisco?

A. Yes.

Q. 11. Do you take that garbage down there to the Reduction Works?

A. Yes.

Q. 12. You have a cart have you, or wagon, horse and wagon?

A. Yes, a horse and wagon.

Q. 13. Has that wagon got any numbers on it—any license numbers?

A. Yes, it has got a number. The first number is 11,266.

Q. 14. Is that 11,266?

A. Yes.

Q. 15. That is what is known as the old number, is it?

A. The old number.

Q. 16. And what is the new number of the wagon?

A. 80.

Q. 17. Are these numbers usually known as license numbers, the number given by the license collector of the city and county of San Francisco?

A. Yes, the old number.

Q. 18. Now, did you ever have the wagon measured by the city and county surveyor to get the cubic contents of it?

A. Yes.

291 Q. 19. How much garbage will your wagon contain according to the measurement of the city and county surveyor?

A. Three yards and a quarter.

Q. 20. That is up to the top, level?

A. Up to the top, level, a little over the top of the boards.

Q. 21. A little over?

A. Yes, the measure goes a little over the top of the boards.

Q. 22. Has that wagon got a scale on it showing the cubic contents?

A. Yes.

Q. 23. Who put that scale on?

A. The city and county surveyor of San Francisco.

Q. 24. Now, can you testify as to the different loads that you have delivered at the Sanitary Reduction Works?

A. Yes.

Q. 25. The amount of garbage that they contain and the amount that you had to pay for each load?

A. Yes.

Q. 26. Well, commencing back some time, can you testify, have you got any memorandum there?

A. Yes. I got some few here, but I never started in the first month

to put it down, you know. I first started in last month. I have to March 27.

Q. 27. You made a memorandum on the 27th of March as to the loads you delivered on that day?

A. Yes.

Q. 28. How much garbage did that load contain?

292 (Objected to as incompetent, irrelevant and immaterial; that the witness is reading his testimony from a book.)

A. I deliver three yards and he charge me one dollar.

Q. 29. March 27th you delivered a load of three yards?

(The same objection.)

A. (Reading.) Yes.

Q. 30. You made this memorandum that you are reading from at the time you delivered this load of garbage?

A. Yes, I have the book in my pocket at the time. I just measure the wagon in my scale and then I look 'round how much I have there, and then I will mark it down, then I will mark it down how much he charge me there.

Q. 31. You could not testify to all these things without referring to this memorandum that you have?

A. Yes, I can do it.

Q. 32. I mean, can you testify without that? You could not tell just how many loads there were, could you?

A. No, I can't do it; he says "You have to pay so much." I say "Then you have not given me enough." I don't know what you mean. I don't understand you very much.

Q. 33. You could not testify as to any of these different loads that you delivered there on these days and how much you paid unless you had some memorandum to refresh your mind by it?

293 A. Yes, I can testify by this.

Q. 34. Can you remember it without the book? Could you remember each load that you delivered there without the memorandum?

A. I didn't have a book there before; I never had it before.

Q. 35. Did you deliver a load there on the 28th?

A. Yes.

Q. 26. How much garbage did that load contain?

Mr. PIERSON: I object to the witness reading his testimony from a book. I object to it as incompetent, irrelevant and immaterial.

A. (Reading:) Three yards, and he charge me one dollar.

(By Mr. HARDING:)

Q. 37. How much did you pay for it?

(The same objection.)

A. (Reading:) One dollar.

Q. 28. Now, let me have the book you have there. Now, can you tell me whether you delivered a load there on the 30th day of March?

A. Oh, on the first day of March.

Q. 29. Did you deliver a load on the 30th day of March?

(The same objection.)

A. (Reading:) Yes.

Q. 30. Can you testify how many yards that load contained?

(The same objection.)

294 A. (Reading:) I have not got any testimony there at the time.

Q. 31. Can you tell by looking at this book, the memorandum that you are using?

A. Yes.

Q. 32. By refreshing your memory with that memorandum you can testify as to the number of loads you delivered and when you delivered them, and how much they contained?

A. Yes.

Q. 33. And the price that you paid for them?

A. Yes.

Q. 34. Now, by aid of your memorandum can you tell us whether you delivered a load there on the 29th of March?

(The same objection.)

A. (Reading:) Yes.

Q. 35. How many cubic yards did that load contain?

(The same objection.)

A. (Reading:) A yard and a half.

Q. 36. One yard and a half?

(The same objection.)

A. (Reading:) One yard and a half; then I pay fifty cents.

Q. 37. Did you deliver a load on the 30th of March?

(The same objection.)

A. (Reading:) Yes, two yards; sixty cents.

Q. 38. What was the next day when you delivered a load there?

(The same objection.)

A. (Reading:) The next? The 20th of April.

295 Q. 39. Did you go there between the last day of March and that time?

A. No, I never marked down there; I was sick. My partner had the book. I didn't go. When I marked it myself, I went there. I didn't work that time, you know.

Q. 40. The next load you delivered was when?

(The same objection.)

A. (Reading:) On the 20th.
Q. 41. The 20th of April?
A. Yes.
Q. 42. How many cubic yards did that load contain?
(The same objection.)
A. (Reading:) One yard and a half; fifty cents.
Q. 43. You paid fifty cents?
A. Yes.
Q. 44. Did you deliver any on April 21st?
(The same objection.)
A. (Reading:) On the 21st, one yard and a half; fifty cents.
Q. 45. Did you deliver any on the 22d?
(The same objection.)
A. (Reading:) Yes, a yard and a half; fifty cents.
Q. 46. Did you deliver any on the 23d?
A. I forget that day; I didn't mark it down, I just marked it again.
Q. 47. That was Sunday, wasn't it?
A. I forget mark down 23; I mark it down 24, same day.
Q. 48. Well, the 24th is to-day?
296 A. Well, I just put it down; I forget to put it down on the 23d. I put — down on the 24th.
Q. 49. That is to-day, the 24th. You say you marked it down to-day? What did you deliver?
(The same objection.)
A. (Reading:) Two yards; sixty-five cents.
Q. 50. Sixty-five cents?
A. Yes, sixty-five cents to-day, this morning.
Q. 51. Now, this amount of garbage that you have testified to were those amounts shown by the scale on your wagon, put there by the city and county surveyor?
A. Yes, they saw each load each time I show it to them fully there. I don't know what you mean.
Q. 52. I mean these amounts of garbage that you have testified to, the amounts that you have shown by the measurements was taken there by the scale made by the city and county surveyor, the scale put on by the city and county surveyor?
A. Yes.
Q. 53. The scale would show two yards, or two and a half yards or three yards?
A. Yes, it is numbered right on the scale and it would show these amounts, two yards or two and a half yards or two and a quarter yards.
Q. 54. That scale is put right on the wagon?
A. Right on the box.

Q. 55. It was put there by the city and county surveyor?
A. Yes.

297 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. You are one of the defendants in this case?
A. Yes.
X Q. 2. You are one of the parties that signed this agreement with the California Reduction Company?
A. Yes.

Mr. PIERSON: I move to strike out all the evidence of this witness as regards charges of the Sanitary Reduction Works upon the ground that it is incompetent, irrelevant and immaterial. Let me see that memorandum book. (The witness produces.)

X Q. 3. Your name is Dominic, is it?
A. Yes, Dominic Picetti.
X Q. 4. Did you ever keep a memorandum book before?
A. No, I never kept one before.
X Q. 5. This memorandum book is confined to those dates that you have testified to, is it?
A. Yes.
X Q. 6. And the charges on those dates?
A. Yes.

Examination-in-chief of FREDERIC NINATTI, a witness called on behalf of respondents other than The California Reduction Company, sworn.

(By the EXAMINER:)

Q. 1. What is your full name?
A. Frederic Ninatti.

(By Mr. HARDING:)

Q. 2. Mr. Ninatti, you are a scavenger by occupation?
A. Yes.
298 Q. 3. Where do you reside?
A. 423½ Broadway.
Q. 4. Are you a married man?
A. Yes.
Q. 5. And a householder?
A. Yes.
Q. 6. You produce garbage yourself, do you?
A. Yes.
Q. 7. And you are also engaged in the business of gathering garbage from houses and hotels in this city and county?
A. Yes.

Q. 8. What do you do with the barbage?

A. Take it to the crematory of the Sanitary Reduction Works.

Q. 9. Do you pay the Sanitary Reduction Works for destroying it?

A. Yes.

Q. 10. Can you testify as to the amount of garbage that you have delivered there at different times and the amount that you have paid the Sanitary Reduction Works for receiving and destroying it?

A. Yes. For a little time past while I did keep account; I didn't before. I could tell you from the 27th of March up until now, I can tell you how much dirt I hauled to the crematory.

Q. 11. Since the 27th of March you have kept a memorandum?

A. Since the 27th of March up until to-day.

Q. 12. That memorandum shows the amounts of garbage that each load contains.

A. Yes.

Q. 13. And what you pay to the crematory?

A. Yes.

299 Q. 14. That memorandum that you speak of was made at the time you delivered the garbage each day?

A. It was made at night when I come home. I put it on the book. Because I could not write English, but I can read some, and I got my wife—I can't write, but I make her mark it down in English. I put it down in Italian, then I make her mark it down in English.

Q. 15. Have you got also a memorandum that you made in Italian?

A. Yes.

Q. 16. Have you got that with you?

A. No, I left it because it was no use to have it here. This is plain enough. I will swear to it just the same as the other one.

Q. 17. Has your wagon got any number on it?

A. Yes.

Q. 18. What are its numbers?

A. The old number was 10,317.

Q. 19. And the new number?

A. The new number is 49.

Q. 20. What are those numbers? Numbers given by the license collector of the city and county of San Francisco?

A. The license collector; a year ago, when I got new number.

Q. 21. Did you have your wagon measured by the city and county surveyor?

A. Yes.

Q. 22. How much garbage does that wagon contain?

A. Three yards and a half.

Q. 23. Just three yards and a half?

300 A. Three yards and a half.

Q. 24. Is that right on a level at the top of the wagon?

A. Level with the side boards.

Q. 25. Does your wagon have a scale showing the cubic contents of it at different elevations?

A. Yes, I have got a measure on the side so that I can see it marked every yard and a half and also up to the top of the wagon.

Q. 26. The first measure shown is one yard and a half?

A. The first is a yard and a half.

Q. 27. Does it show the point at which it will contain two cubic yards?

A. It shows from one yard up, one yard, one yard and a half, two yards, two yards and a half, three yards; three yards and a half.

Q. 28. Now, can you testify as to the load that you delivered there on the 27th of March?

A. Yes.

Q. 29. How much garbage did that load contain?

(Objected to as incompetent, irrelevant and immaterial; that the witness is reading his testimony from a book.)

A. (Reading:) Two yards; fifty cents. Second load now comes, one yard and a quarter; twenty-five cents.

Q. 30. When did you deliver the next load?

(The same objection.)

A. (Reading:) On the 28th, sir.

Q. 31. How much did that contain?

(The same objection.)

A. (Reading:) Three yards and a half; ninety cents.

301 Q. 32. And the next load?

(The same objection.)

A. (Reading:) On the 29th, three yards; seventy-five cents.

Q. 33. And the next?

(The same objection.)

A. (Reading:) On the 30th, three yards; seventy-five cents.

Q. 34. And the next?

(The same objection.)

A. (Reading:) The second load one yard; twenty-five cents.

Q. 35. And the next load?

(The same objection.)

A. (Reading:) On the 31st two yards and a half; sixty-five cents; second load, three yards, ninety cents.

Q. 36. And the next load?

(The same objection.)

A. (Reading:) Ninety cents was the 31st; the second load, ninety cents, three yards.

Q. 37. Then after that?

(The same objection.)

A. (Reading:) On April 1st, two yards and a half, seventy cents. On the 3d, two yards and a half; sixty-five cents; second load, one yard and a quarter; thirty cents. On the 4th two yards and a half, one dollar. On the 5th, two yards and a quarter; sixty-five cents; on the 6th, three yards and a half; seventy cents; second load, one yard; twenty-five cents; on the 7th, two yards and a half,
302 seventy cents; second load; two yards; forty cents.

(By Mr. PIERSON:)

Q. 38. The same day?
A. Yes, the same day.
Q. 39. How much?
A. Two yards; forty cents.

(By Mr. HARDING:)

Q. 40. On the 8th?

(The same objection.)

A. (Reading:) On the 8th, two yards and a half; sixty-five cents. On the 10th, three yards, eighty cents.
Q. 41. And the next?

(The same objection.)

A. (Reading:) On the 11th, three yards and a quarter; eighty cents; on the 12th, two yards, sixty cents; on the 13th, two yards and a half, seventy cents; second load on the 13th, one yard and a quarter; thirty cents; on the 14th, two yards and a half, seventy-five cents; second load two yards; sixty cents; on the 15th, one load, two yards and a half; sixty-five cents.
Q. 42. And the next?

(The same objection.)

A. (Reading:) On the 17th, two yards and a half, sixty cents; second load three-quarters of a yard; twenty cents; on the 18th, two yards and three-quarters; seventy-five cents; on the 19th, two yards; fifty-five cents; on the 20th, two yards and a half, seventy-five cents, second load two yards and a half, seventy cents; on the 21st, two yards and a quarter; sixty-five cents. Second load,
303 one yard and three-quarters, sixty cents; on the 22d, two yards and a quarter; sixty cents. This is the last I have got.
Q. 43. Did you deliver any load to-day?
A. Yes, my partner is delivering a load to-day, but I was not present at the measurement.

Cross-examination:

Mr. PIERSON: I move to strike out this evidence now upon the grounds hereinbefore stated in the motion made to the evidence of the preceding witness.

X Q. 1. You never kept a memorandum book before in this business, did you?

A. No, sir.

X Q. 2. How came you to keep this one?

A. Well, that was just to know every month how much we will pay for our measurements.

X Q. 3. How came you to start on the 27th of March to keep a book?

A. That was at a meeting that we had between the scavengers. We said we would keep a few books, not many.

X Q. 4. So you had a meeting and you concluded, all of you, to keep books at that time?

A. No, not all; just a few.

X Q. 5. Just a few who would testify?

A. No, we didn't know of that; just to see the differences of our measurements.

X Q. 6. By the way, you are one of the defendants in this case, are you not?

A. Yes.

304 Examination-in-chief of ANDREW REPETTI, a witness called on behalf of respondents other than the California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. Mr. Repetti, where do you reside?

A. 12 Houston street.

Q. 2. What is your business?

A. Scavenger.

Q. 3. Are you a married man?

A. No, sir.

Q. 4. Your business is that of a scavenger?

A. Yes.

Q. 5. You collect garbage from house to house?

A. Yes.

Q. 6. And deliver it at the reduction works of the Sanitary Reduction Company?

A. Yes.

Q. 7. Do you employ a cart or wagon in your business?

A. A wagon.

Q. 8. Has that wagon got any numbers on it?

A. Yes. It has got two numbers, one old and one new.

Q. 9. What is the old number?
A. 5343.
Q. 10. And the new number?
A. 12.
Q. 11. Was that number given to the wagon by the license collector of the city and county of San Francisco?
A. Yes.
Q. 12. When was that new number put on?
A. On the 1st of July last year.
Q. 13. Did you have your wagon measured by the city and county surveyor?
A. Yes.
305 Q. 14. When was that? Prior to July 1st, 1898?
A. I don't remember when it was.
Q. 15. Was it before July? Did you have that done before July or after?
A. I think before July.
Q. 16. Does your wagon have a scale on it showing the cubic contents at different elevations?
A. Yes.
Q. 17. Who put that scale on it?
A. The city and county surveyor of this city.
Q. 18. Did he put it on at the time when he measured your wagon?
A. Yes.
Q. 19. Can you testify as to the amount of garbage contained in different loads that you have delivered at the Sanitary Reduction Works?
A. Yes.
Q. 20. How much?
A. You pay for those loads yourself.
Q. 21. When can you testify was the first day when you delivered there?
A. I began on the 1st of April for this year.

Mr. PIERSON: I move to strike out the answer of the witness on the ground that he is reading his testimony from a book.

(By Mr. HARDING:)

Q. 22. You are looking over a book now from which you are testifying?
A. Yes.
Q. 23. What is that book? A memorandum made by yourself?
A. Yes.
Q. 24. A memorandum made at the time when you delivered the loads?
306 A. No, sir, I made it in the evening; when I go home my first work I do this work.
Q. 25. You made it in the evening?

A. In the evening; the same evening.

Q. 26. The first load you testified to you think you put down the same evening? You made a memorandum the same evening?

A. Yes.

Q. 27. Showing how much garbage that load contained and what you paid for it?

A. Yes.

Q. 28. And the amount of garbage shown there is according to the measurement of the wagon indicated by the scale put on by the city and county surveyor?

A. Yes.

Q. 29. You say you delivered a load on April 10th?

(Objected to as incompetent, irrelevant and immaterial; that the witness is reading from his memorandum-book.)

A. (Reading:) On April 10th.

Q. 30. Now, what was the capacity?

A. April 10, 1899, two yards and a quarter; I pay seventy cents.

Q. 31. When did you deliver the next load?

(The same objection.)

A. (Reading:) On the same day, two yards; fifty cents.

Q. 32. And the next?

(The same objection.)

A. (Reading:) April 11th, two and a half cubic yards; paid seventy cents.

307 Q. 33. When did you deliver the next load?

(The same objection.)

A. (Reading:) April 11th, two and a half cubic yards; paid seventy cents. On the same day one and one-quarter yards: forty cents.

Q. 34. And the next?

(The same objection.)

A. (Reading:) April 12th, 1899, two cubic yards; paid sixty cents.

Q. 35. And the next?

(The same objection.)

A. (Reading:) April 13th, two and a quarter cubic yards; paid sixty-five cents.

Q. 36. And the next?

(The same objection.)

A. (Reading:) April 14th, two and a quarter cubic yards; sixty-five cents. The same day two and a quarter cubic yards; sixty-five cents. On April 15th my partner went down. I didn't mark

nothing that day. Sunday, April 16, 1899, two and a quarter cubic yards; seventy cents.

Q. 37. Was that delivered by you or by your partner?

A. By I. On Saturday my partner went down and I don't mark at all.

Q. 38. What was that date? 17th?

(The same objection.)

A. (Reading:) April 16th, two and a quarter cubic yards; paid seventy cents; April 17th, two and a quarter cubic yards, paid sixty-five cents.

308 Q. 39. And the next?

(The same objection.)

A. (Reading:) On the same day, one and three-quarter cubic yards; paid forty-five cents. April 18th, two and a quarter cubic yards; paid seventy cents. On the same day, two cubic yards, sixty-five cents. April 19th, two and a quarter cubic yards; paid seventy cents. April 20th, two and a quarter cubic yards; paid sixty-five cents. April 21st, two cubic yards; paid fifty-five cents. Another load on that same day, two yards, fifty-five cents. April 22nd, one yard and three-quarters; paid fifty cents. That is all I have. I don't have any more.

Q. 40. You didn't deliver any load to-day?

A. My partner went down; I don't know; he didn't tell me anything.

Cross-examination:

Mr. PIERSON: I move to strike out all the evidence of this witness on the grounds heretofore stated in regard to similar motions.

X Q. 1. Are you one of the defendants in this case?

A. Yes.

Examination-in-chief of FERDINANDO BOICELLI.

(By Mr. HARDING:)

Q. 1. What is your business?

A. Scavenger.

Q. 2. How long have you followed that business?

A. Over twelve years.

309 Q. 3. Where do you reside?

A. Lombard street, 1825 Lombard.

Q. 4. Are you a married man?

A. Yes.

Q. 5. You have a family?

A. Yes.

Q. 6. Do you keep house?

A. Yes.

Q. 7. Do you produce any garbage yourself?
A. Yes.
Q. 8. Do you take any of your own garbage down to the crematory?
A. Yes.
Q. 9. Do you use a wagon in your business?
A. Yes.
Q. 10. Gathering garbage from house to house?
A. Yes.
Q. 11. Has your wagon got any numbers on it?
A. Yes, 14089.
Q. 12. Is that what they call the old number?
A. The old number.
Q. 13. Has it got any new number?
A. The new number 28.
Q. 14. What are those numbers? Were they given to the wagon by the license collector?
A. Yes.
Q. 15. The license collector of the city and county of San Francisco?
A. Yes.
Q. 16. Did you have your wagon measured by the city and county surveyor?
A. Yes.
Q. 17. Did it have a scale on it showing the cubic contents?
A. Yes.
Q. 18. How many cubic yards of garbage does your wagon hold?
310 A. Three yards and a half at pretty near two inches over the boards.
Q. 19. What do you mean by that?
A. The scale it goes right above the board like that. (Showing.)
Q. 20. It contains above the level of the top of the boards?
A. Yes, three yards and a half, right here. (Showing.)
Q. 21. Can you testify as to any loads you have delivered at the works of the Sanitary Reduction Works?
A. Yes.
Q. 22. And the amount of garbage that these loads contained?
A. Yes.
Q. 23. Also what you paid for these loads?
A. Yes.
Q. 24. Can you testify as to what day you began?
A. On the 27th of March.
Q. 25. How much garbage did the loads contain that you have delivered?

(Objected to as incompetent, irrelevant and immaterial, and that the witness is reading his evidence from a book.)

Q. 26. You are consulting a book, a memorandum, when you testify, are you?

A. Yes.

Q. 27. Is this a memorandum that you made yourself?

A. Yes. I made myself just a little bit, the 27th.

Q. 28. Did you make it at the time when you delivered the garbage?

311 A. I put it down every night; I go home and I put it down in the book.

Q. 29. Then you made this memorandum on your book that you delivered the load there?

A. Yes.

Q. 30. These momorandums are correct, are they?

A. Yes.

Q. 31. How much garbage did the load contain that you delivered on the 27th of March?

(The same objection.)

A. (Reading:) On the 27th, two yards and a half; eighty cents.

Q. 32. That was this year?

A. Yes.

Q. 33. Yes, and the next?

(The same objection.)

A. (Reading:) The next load the 28th, two yards; sixty-five cents.

Q. 34. And the next?

(The same objection.)

A. (Reading:) On the same day, two yards; sixty cents.

Q. 35. And the next?

(The same objection.)

A. (Reading:) On the 29th, two yards and a half, eighty cents.

Q. 36. And the next?

(The same objection.)

A. (Reading:) On the 30th, two yards and a quarter; seventy cents.

Q. 37. And the next?

312 (The same objection.)

A. (Reading:) The next was on the 31st, two yards and a quarter, seventy cents.

Q. 38. And the next?

(The same objection.)

A. (Reading:) The next, that would be the 1st, two yards; sixty-five cents.

Q. 39. And the next?

(The same objection.)

A. (Reading:) The next, one and a quarter yards; forty cents.
Q. 40. That was on April 2d?
A. On the same day.
Q. 41. And the next?

(The same objection.)

A. (Reading:) Two yards and a quarter; seventy-five cents.
Q. 42. That was April 3d?

(The same objection.)

A. (Reading:) That was April 3d, yes.
Q. 43. And the next?

(The same objection.)

A. (Reading:) April 4th, one yard and three-quarters, sixty cents.
Q. 44. And the next?

(The same objection.)

A. (Reading:) On the same day one yard and three-quarters; sixty-five cents.
Q. 45. And the next?

313 (The same objection.)

A. (Reading:) Two yards and three-quarters; eighty-five cents.
Q. 46. And the next?

(The same objection.)

A. (Reading:) The 6th, two yards; seventy cents.
Q. 47. And the next?

(The same objection.)

A. (Reading:) The next the 7th, two yards and a quarter, seventy-five cents.
Q. 48. And the next?

(The same objection.)

A. (Reading:) The next the 8th, two yards; sixty-five cents.
Q. 49. And the next?

(The same objection.)

A. (Reading:) The same day, one yard; twenty cents.
Q. 50. That was on the 9th or 8th?

(The same objection.)

A. (Reading:) The 8th.

(The same objection.)

Q. 51. And the next?

(The same objection.)

A. (Reading:) The next the 10th, two yards and three-quarters; seventy-five cents.

Q. 52. And the next?

(The same objection.)

A. (Reading:) One yard and a quarter; sixty cents.

Q. 53. And the next?

314 (The same objection.)

A. (Reading:) On the same day one yard and three-quarters; sixty-five cents.

Q. 54. And the next?

(The same objection.)

A. (Reading:) The next the 12th, two yards and a quarter; seventy-five cents.

Q. 55. And the next?

(The same objection.)

A. (Reading:) The next on the 13th, one yard and three-quarters; fifty-five cents.

Q. 56. And the next?

(The same objection.)

A. (Reading:) The next the 14th, two yards and a quarter; seventy cents.

Q. 57. And the next?

(The same objection.)

A. (Reading:) The next the 15th, two yards and three-quarters; ninety cents.

Q. 58. And the next?

(The same objection.)

A. (Reading:) The next the 17th, two yards and a quarter; seventy-five cents.

Q. 59. And the next?

(The same objection.)

A. (Reading:) The next the 18th, one yard and three-quarters; fifty-five cents.

Q. 60. And the next?

(The same objection.)

315 A. (Reading:) The next the same day, one yard and three-quarters; fifty cents.

Q. 61. And the next?

(The same objection.)

A. (Reading:) On the 19th, two yards and a half, eighty cents.

Q. 62. And the next?

(The same objection.)

A. (Reading:) The next on the 20th, two ya[illegible] and a quarter; sixty-five cents.

Q. 63. And the next?

(The same objection.)

A. (Reading:) The next on the 21st, two yards and a half; seventy-five cents.

Q. 64. And the next?

(The same objection.)

A. (Reading:) On the 22d, two yards and three-quarters; seventy cents.

Q. 65. You didn't deliver any load yesterday or to-day?

A. To-day I don't go; I send another man.

Cross-examination:

Mr. PIERSON: I move to strike out the testimony of this witness on the ground hereinbefore stated.

X Q. 1. You are one of the defendants in this case?

A. Yes.

316 (By Mr. HARDING:)

Q. 1. What is your business, Mr. Mondoni?

A. Scavenger.

Q. 2. How long have you been in that business?

A. One year.

Q. 3. Where do you reside, Mr. Mondoni?

A. Where I live? 113 Fair Oaks, between 22d and 23d.

Q. 4. Are you a married man?

A. No.

Q. 5. Do you use a wagon or cart in your business?

A. Yes.

Q. 6. Has that cart got any numbers on it?

A. Yes.

Q. 7. What are those numbers?

A. The old number 8877.

Q. 8. What is the new number?

A. 105.

Q. 9. Did you have your wagon measured by the city and county surveyor?

A. Yes.

Q. 10. Has it got a scale on it showing the cubic measurement?

A. Yes.

Q. 11. How much does that wagon hold?

A. Three yards.

Q. 12. Is that up to the top?

A. That is up to the top.

Q. 13. That is even with the top?
A. Yes, three yards.
Q. 14. Has it got any scale on it?
A. Yes.
Q. 15. Any scale showing the measurements?
A. Yes.
317 Q. 16. To the top of this cart according to this scale, to the top shows how much?
A. Three yards.
Q. 17. Three yards up to the level of the boxes?
A. Yes.
Q. 18. Now, can you testify as to any loads of garbage that you have recently taken to the Sanitary Reduction Works?
A. Yes.
Q. 19. As to the amount of garbage contained in each load, and the price that you paid for those loads at different times?
A. Yes.
Q. 20. Can you testify as to any loads that you delivered there recently?
A. Yes.
Q. 21. As to the first load?

Mr. PIERSON: We object to that as incompetent, irrelevant and immaterial. The witness is again reading from a book.

A. (Reading:) The first load, three yards.

(By Mr. HARDING:)

Q. 22. You have got a book there from which you are reading?
A. Yes.
Q. 23. Did you make the entries here yourself?
A. Yes.
Q. When did you make them? I say at what time did you make them? When did you make this?
A. The 1st of April.
Q. 25. Did you note in this memorandum the number of cubic yards you delivered there on the 1st?
A. Yes.
Q. 26. You made it the same day?
A. Yes.
Q. 27. The same day, each day that you delivered it?
A. I make about the 1st.
318 Q. 28. Now, you delivered a load there on the 6th for instance?
A. No, not on the 6th.

The JUDGE: When did you write that memorandum? When did you put that there?

(The witness being unable to understand and to testify in English, was withdrawn).

Examination-in-chief of CIPRIANO VALENTI, a witness called on behalf of the respondents other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. Where do you reside, Mr. Valenti? Where do you live?
A. 1616 Lombard street.
Q. 2. What is your business, Mr. Valenti?
A. Scavenger.
Q. 3. How long have you been in that business?
A. About fourteen years.
Q. 4. Are you a married man?
A. Yes, I am married.
Q. 5. Have you got a family?
A. Yes.
Q. 6. Do you keep house?
A. Yes.
Q. 7. Do you produce garbage yourself?
A. Yes.
Q. 8. Do you take any of your own garbage to the Sanitary Reduction Works?
A. Yes.
Q. 9. Do you use a cart or wagon in your business?
A. Yes.
319 Q. 10. Do you go from house to house gathering garbage?
A. Yes.
Q. 11. Does that cart or wagon have any numbers on it?
A. Yes.
Q. 12. What numbers?
A. Old number, 16599.
Q. 13. And the new number?
A. The new number is number 32.
Q. 14. These are the numbers given to you for your wagons by the license collector?
A. Yes.
Q. 15. You go and pay the license and you get a number?
A. Yes, every year I get my number on the 14th of July or August.
Q. 16. July of last year they changed the number?
A. Yes.
Q. 17. Did you have your wagon measured by the city and county surveyor?
A. Yes.
Q. 18. To get the cubic contents of the wagon?
A. Yes.
Q. 19. And at that time what number did that wagon have?
A. My wagon if loaded all to full around is two yards and a half. I got a board. If that board I keep on top, all 'round on top of the board, it measures three yards.

Q. 20. It measures from the top board?

A. Yes, my wagon keep full two yards and a half, just full all 'round.

Q. 21. Did the city and county surveyor put this scale on your wagon?

A. Yes.

320 Q. 22. Is it on there now? It shows the measurement at different points of elevation?

A. Yes.

Q. 23. Then according to this scale that he put on it is three yards?

A. Yes.

Q. 24. Now can you testify as to the number of loads of garbage that you have taken to the Sanitary Reduction Works?

A. Yes.

Q. 25. When did you take the first load that you can testify to?

A. When I started to have a book, the 27th of March to the 22d of April.

Q. 26. You say you have got a book showing that?

A. Well, I got this book and I make it myself, and then my boy, he is English, you know, my boy made it. But it is the same, you know because if you ask for my book to go on the stand why you can't read my book.

Q. 27. By looking at that memorandum you can testify how much garbage you delivered on that day and thereafter to the Reduction Works?

A. Yes.

Q. 28. When did you make that memorandum, that book?

A. On the 27th. I make about the 27 of March. On the 27th is two yards and a quarter.

Mr. PIERSON: We make the same objection to the testimony of this witness, as incompetent, irrelevant and immaterial. The witness is reading his evidence from a book. I wish the objection repeated to each question.

321 (By Mr. LEAMING:)

Q. 29. About how much did you deliver there on March 27th?

A. March 27th, two yards and a quarter; paid sixty-five cents.

Q. 30. Now this memorandum that you have in your hand——

A. (Interrupting.) Yes, this I have in my hand.

Q. 31. You made that yourself?

A. Yes, this I made myself.

Q. 32. When did you make that memorandum?

A. The 27th or 28; on the 27th or 29th or 30th.

Q. 33. Each time you made it?

A. On each day I made it. When I go home I make it myself.

Q. 34. You make that memorandum yourself?

A. Yes, I do.

Q. 35. You are now using that memorandum to refresh your memory? By reading from it to refresh your memory?

A. I don't understand now what you mean.

Mr. LEAMING: I will withdraw the question.

Q. 36. Now when did you deliver the next load?

(The same objection.)

A. (Reading:) I delivered the next load on the 28th; two yards sixty cents.

Q. 37. You delivered two yards at the Sanitary Reduction Works and paid sixty cents for it?

A. Yes.

Q. 38. When did you deliver the next load?

322 (The same objection.)

A. (Reading:) On the 29th, two yards; sixty-five cents.

Q. 39. And the next?

(The same objection.)

A. (Reading:) On the 30th, two yards and a half; seventy cents.

Q. 40. And the next?

(The same objection.)

A. (Reading:) The 31st, two yards and a quarter; sixty-five cents.

Q. 41. And the next?

(The same objection.)

A. (Reading:) The 1st of April, two yards; sixty cents.

Q. 42. And the next?

(The same objection.)

A. (Reading:) The next on the 3d of April, two yards and a half; seventy cents.

Q. 43. And the next?

(The same objection.)

A. (Reading.) On the 14th, two yards; fifty cents.

Q. 44. And the next?

(The same objection.)

A. (Reading:) On the 5th two yards and a quarter; sixty cents. On the 6th, two yards and a half; sixty cents.

Q. 45. And the next?

(The same objection.)

323 A. (Reading:) On the 7th, two yards and a quarter; fifty-five cents.

Q. 46. And the next?

(The same objection.)

A. (Reading:) On the 8th, two yards and a quarter; sixty cents.
Q. 47. And the next?

(The same objection.)

A. (Reading:) On the 10th, two yards and a half; fifty-five cents.
Q. 48. And the next?

(The same objection.)

A. (Reading:) On the 11th, two yards; fifty cents.
Q. 49. And the next?

(The same objection.)

A. (Reading:) On the 12th, two yards; sixty cents. On the 13th, two yards; sixty cents. On the 14th, two yards; sixty-five cents.
Q. 50. And the next?

(The same objection.)

A. (Reading:) On the 15th, two yards; fifty-five cents.
Q. 51. And the next?

(The same objection.)

A. (Reading:) On the 17th, two yards; sixty-five cents.
Q. 52. And the next?

(The same objection.)

324 A. (Reading:) On the 18th, two yards; sixty cents. 9th, two yards; fifty-five cents.
Q. 53. And the next?

(The same objection.)

A. (Reading:) On the 20th, two yards and a half; seventy cents.
Q. 54. Yes?

(The same objection.)

A. (Reading:) The 21st, two yards and a quarter; seventy cents.
Q. 55. Yes?

(The same objection.)

A. (Reading:) On the 22d, two yards; sixty cents. That is all. I have no load to-day. My partner go, but I don't know how much he pay.

Cross-examination:

Mr. PIERSON: I move to strike out this evidence upon the same ground as before stated to the evidence of the last preceding witness.

X Q. 1. You are one of the defendants in this case?
A. Yes.

Mr. PIERSON: That is all.

Examination-in-chief of GUIGLERMO VARNI, a witness called on behalf of the defendants other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. Where do you live?

325 A. 758 Florida street.

Q. 2. What is your business?

A. Scavenger.

Q. 3. Are you a married man?

A. Yes.

Q. 4. Do you keep house?

A. Yes.

Q. 5. Do you produce garbage yourself?

A. Yes.

Q. 6. Do you take some of this garbage over to the crematory to have it destroyed there?

A. Yes.

Q. 7. Do you go from house to house collecting garbage in your business?

A. Yes.

Q. 8. Have you a wagon in that business?

A. Yes.

Q. 9. Has that wagon got any number on?

A. Yes. The old number 10178 and the new number 123.

Q. 10. Did you have your wagon measured by the city and county surveyor?

A. Yes.

Q. 11. According to that measurement how much garbage does that wagon hold?

A. Three yards and a quarter just on top on the boards.

Q. 12. Just on top of the highest board?

A. Yes, all square to the top of the board.

Q. 13. Does your wagon have a scale on it showing this measurment?

A. Yes.

Q. 14. Who put that scale there?

A. The surveyor.

Q. 15. The city and county surveyor?

A. Yes.

Q. 16. Of San Francisco?

A. Yes.

326 Q. 17. Can you testify as to any loads of garbage that you have delivered to the Sanitary Reduction Works?

A. Yes.

Q. 18. Can you testify as to the amount of garbage in each load, and what you paid for cremating it at the crematory?

A. Yes.

Q. 19. At what time can you commence to testify to those facts?
A. April 14th.

(By Mr. PIERSON:)

Q. 20. 1899?
A. 1899.

(By Mr. HARDING:)

Q. 21. That is this year?
A. That is this year.

Mr. PIERSON: I object to the witness reading his testimony from a book, as incompetent, irrelevant and immaterial.

The WITNESS (continuing): One yard and a half; fifty-five cents. On the 15th, two yards——

(By Mr. HARDING:)

Q. 22. (Interrupting.) You are looking at a book or memorandum when you are testifying?
A. Yes.
Q. 23. Did you write this yourself?
A. Oh, yes, of course.
Q. 24. The memorandum?
A. Yes.
Q. 25. When did you make this memorandum?
A. Well, just the same day.
Q. 26. That day that you went there and delivered the load you put it down in this book?
A. Yes, the same day, the same time, I did this myself.
327 Q. 27. Did you deliver a load there on April 15th?

(The same objection.)

A. (Reading:) Yes, the 15th, two yards and a half; seventy-five cents. On the 17th, two yards; sixty-five cents; on the 18th, two yards; fifty-five cents; on the 19th, two yards and a half; seventy cents. On the 20th, two yards; seventy-five cents; on the 21st, one yard and a half; fifty cents. On the 22d, two yards; seventy cents. On the 24th, two yards; sixty-five cents. That is all.

Cross-examination.

Mr. PIERSON: I move to strike out this evidence on the grounds hereinbefore stated in regard to the testimony of the former witness.

X Q. 1. You are one of the defendants in this case, are you?
A. Yes.

Further hearing adjourned to Wednesday, April 26th, 1899, at 10 a. m.

WEDNESDAY, April 26th, 1899—10 a. m.

Further hearing adjourned to Thursday, May 4th, 1899, at 10 a. m.

WEDNESDAY, May 4, 1899—10 a. m.

Counsel Appearing.

For complainant W. M. Pierson, Esq.
For respondent California Reduction Company, E. B. Leaming, Esq.
For respondents other than California Reduction Company, R. T. Harding, Esq.

328 Examination-in-chief of G. B. RAGGIO, a witness called on behalf of respondents other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. What is your full name?
A. G. B. Raggio.
Q. 2. What is your business, Mr. Raggio?
A. Scavenger.
Q. 3. How long have you followed that business?
A. Nine years on the 4th of March.
Q. 4. Do you employ or use a wagon or cart in conducting your business?
A. Well, I have only got one wagon that I go out every day.
Q. 5. Do you gather garbage in your wagon?
A. Yes, I get garbage around the city every day.
Q. 6. From house to house?
A. From house to house and deliver it to the crematory of the San Francisco Reduction Works.
Q. 7. Has your wagon a number?
A. The new one is 21.
Q. 8. And the old number?
A. 8733.
Q. 9. Those are the numbers given to the wagon by the license collector?
A. By the health office department. Yes. It goes to the license collector.
Q. 10. When you pay your license you get a receipt that has the same numbers on?
A. Yes.
Q. 11. It used to have the number 8733?
329 A. It used to have the number 8733.
Q. 12. And your present license has the number 21 on it?
A. 21, yes.
Q. 13. Did you ever have your wagon measured by the city and county surveyor?

A. Yes, I have my wagon measured by the city and county surveyor.

Q. 14. Did you ascertain as a result of such measurement the cubic contents of your wagon?

A. Yes, sir.

Q. 15. How many cubic yards does that wagon contain.

A. Three and a quarter when it is full to the top.

Q. 16. Mr. Raggio, can you testify as to any particular loads of garbage that you have delivered at the crematory of the San Francisco Reduction Works, giving the number of cubic yards that such loads contained and the amount that you had to pay for them?

A. On March 27, for two and a half, I pay eighty cents.

Mr. PIERSON: We object to that upon the ground that the witness is reading his testimony from a book; also that it is immaterial, irrelevant and incompetent.

(By Mr. HARDING:)

Q. 17. On March 27, two yards you say?

(The same objection.)

A. (Reading:) Yes, two yards and a half, and I pay eighty cents.

330 Q. 18. That is, you paid eighty cents to the Sanitary Reduction Works?

A. Yes, sir.

Q. 19. After they received it at the crematory?

A. To cremate the garbage.

Q. 20. You are looking at a memorandum, Mr. Raggio. What is that memorandum or book?

A. That is a memorandum that I have been marking every day, what I deliver and what I pay.

Q. 21. It is an account that you have kept of the loads?

A. Kept of the loads to see what I have been over charged; to see what rate I have been over charged.

Q. 22. Could you testify to these matters now without looking at your book?

A. Oh, I can't testify without looking at my book because it is every day I pay and then I put it down on the book.

Q. 23. You have got to refresh your memory in order to testify as to the amount you delivered each day and what you paid?

A. Certainly, certainly.

Q. 24. But that memorandum was made each day at the time when you delivered?

A. Each day I put it down when I delivered to the Sanitary Reduction Works.

Q. 25. When you deliver garbage and pay your money to the Sanitary Reduction Works?

A. Yes, sir.

Q. 26. Now when did you deliver the next load?

331 (By Mr. PIERSON :)

Q. 27. March 27, what year was that?
A. 1899.

(By Mr. HARDING :)

Q. 28. What was the next load?

(The same objection.)

A. (Reading :) March 28, two yards and three-quarters; I pay ninety cents. On the 29th, I had one yard and a quarter; I pay forty cents. On the 30th March I had two yards and a half and I pay eighty-five cents. On the 31st March, I had two yards and a quarter; I pay one dollar. April 1st, I had two yards and I pay sixty cents. On the 2nd was Sunday and I didn't deliver any. On the 3d I had two yards and three-quarters and I pay ninety cents. On the 4th I had two yards and a half and I pay eighty cents. On the 4th again I went there a second time; I had two loads; I had one yard and a quarter, and I pay forty cents. On the 5th April I had two yards and a half; I pay eighty cents. On the 5th again a second load I had one yard and a quarter and I pay forty cents. On the 6th I had two yards and a quarter and I pay seventy cents. On the 7th I had two yards and three-quarters and I pay ninety cents. On the 8th I had two yards and I pay sixty cents. On the 9th was Sunday; I didn't deliver any. On the 10th, I had two yards and a quarter and I pay seventy cents. On the 11th I had two yards and a half and I pay eighty cents. On the 12th I had one yard and three-quarters and I pay fifty-five cents. On
332 the 12th again a second load I had one yard and a half; I pay fifty cents.

Q. 29. That was on the 12th?

A. That was on the 12th because I went there a second time, on the 12th. On the 13th, I had two yards and three-quarters, and I pay ninety cents. On the 14th I had three yards and I pay ninety cents. On the 15th I had two yards and a quarter and I pay sixty-five cents. On the 17th I had two yards and I pay sixty cents. On the 18th I had two yards and a half and I pay eighty cents. On the 19th, one yard and three-quarters and I pay fifty-five cents. On the 19th a second load I had one yard and a half and I pay fifty cents. On the 20th I have two yards and I pay sixty cents. On the 21st I have three yards and I pay ninety-five cents. On the 22d I have two yards and I pay fifty-five cents. On the 23d was a holiday, was Sunday. On the 24th I have two yards and a quarter and I pay seventy cents. On the 25th I have three yards and I pay ninety cents. On the 26th I have two yards and a quarter and I pay seventy-five cents. On the 27th I have two yards and a quarter and I pay seventy-five cents. Again on the 27th I go there a second time; the second load I have one yard and three-quarters, fifty cents. On the 28th three yards, one dollar. On the 29th two yards and a

quarter, sixty-five cents. Now May, 1st of May I had one yard and three-quarters and I pay fifty-five cents. On the 2nd of May I had two yards and a half and I paid eighty-five cents. On the 3d
333 I had two yards and I paid sixty-five cents. On the 3d of May again a second time I had one yard and three-quarters and I pay fifty cents. That is all.

Q. 30. Mr. Raggio when you drive up there to the crematory with a load for the purpose of delivering it how does the crematory arrive at the amount that it charges on it?

A. Well, they just, as soon as I get down there to the crematory a man is there at the gate and he look at the load. He get up on a wheel and he just look at it and he says, "That load so and so much." That is all. Then he say how much I have to pay and I cash out the money.

Q. 31. He just takes a look at it?

A. He just takes a look at it, yes.

Q. 32. If you are dissatisfied with the charges can you have your load measured?

A. You can have it measured by going upstairs, and you sometimes stay half an hour for measure it. Then when they measure it they fill up the box with the dirt at the side of the box and in the middle they leave a big hole. They raise up the dirt on the side and on the other side they leave the dirt very low; then it look at the top very high, at the side it is very high. So they raise up and measure what they want to.

Q. 33. Do they have boxes there?

A. They have some boxes there, yes.

Q. 34. You drive up to the platform?

A. I drive up to the platform.

Q. 35. And dump from your wagon into those boxes?

A. And dump from my wagon into those boxes.

334 Q. 36. And is the garbage tamped down any?

A. Sometimes they have it tamped down; you have to stay there with a pitchfork and work sometimes fifteen or twenty minutes to get it out of your wagon. Then when it goes down in the box, then when you are cleaning the wagon, cleaning the dirt out of the bottom so that you can get it all, then they go ahead and measure it and say what you shall pay.

Q. 37. They measure each load in the boxes?

A. They measure each load in the boxes, yes.

Q. 38. Do they decline to take the measurement of the stuff in the condition that you bring it there in your wagon?

A. No, they won't take it in the condition when you got it in the wagon, but they want you to take it out and put it in the boxes in a condition to weigh best, loose.

Q. 39. They want to measure it loose?

A. Yes; suppose you have got an old tin can out of the wagon they put that into the box and they put the dirt on top of it with a pitchfork. They don't want to get the dirt in the can; you can't

put the dirt into the can in the box at all. You can't stuff the can inside of the boxes at all. They want to do as they please. On the 15th of September they charge me $1.20 for one load, and I went up there and I measured it and I find it was four yards his own measure, the way they want to measure it. My wagon don't hold any more than three yards and a quarter. Still I didn't get paid
335 but thirty cents back, and they didn't want even to give me that. I got thirty cents back. They were to pay me back forty-five cents, but I get thirty.

Q. 40. You don't measure very often do you?

A. No, sir; what is the use to measure? Because when they measure it they want to do as they please anyway. I stay up there half an hour altogether. Many times he says to me "You go there and wait till I get tired and I go and he probably don't come up for half an hour. If a man goes up there he has to stay half an hour up there.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Are you one of the defendants in this case?

A. I am one that delivered garbage to the crematory.

X Q. 2. Are you one of the defendants in this suit? Are we suing you in this case? You are not one of the defendants?

A. I am in the business.

X Q. 3. What is the number of your wagon did you say?

A. 21.

X Q. 4. You are one of the persons who signed the agreement with the California Reduction Company?

A. Yes, I did.

X Q. 5. Now you testified to delivering loads to the Sanitary Reduction Works commencing March 28, 1899, down to May 3, 1899. Did you have either of these loads measured at the reduction works?

A. No, sir.

336 X Q. 6. When was it that it took you half an hour to measure your garbage at the reduction works?

A. Well, I didn't put it down on my book, but it takes me many, many times.

X Q. 7. Can you give us the date of any time?

A. No. I didn't put it down because I never thought of it, else I would have put it down.

X Q. 8. How often have you had your garbage measured at the works?

A. Oh, I have been at the works about five or six times since the crematory started; probably something like that.

X Q. 9. Now, September 15th, you say they charged you $1.20 for one load?

A. Yes, sir.

X Q. 10. And gave you thirty cents back after you measured it?
A. Yes; they ought to give me forty-five cents.
X Q. 11. What year was that?
A. About last year.
X Q. 12. 1898?
A. Yes, sir.
X Q. 13. September 15th?
A. Yes, September 15th.

Examination-in-chief of ANDREW ARDAINA, a witness called on behalf of defendants other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. What is your full name?
A. Andrew Ardaina.
337 Q. 2. What is your business?
A. Scavenger.
Q. 3. How long have you been in the business?
A. About five years.
Q. 4. Do you use a cart or wagon in conducting your business.
A. Yes, sir.
Q. 5. Has that cart got any number on it?
A. Yes, sir.
Q. 6. What is the number of your cart?
A. 47.
Q. 7. Is that what is known as the new number?
A. I don't remember the old number. I can't tell you exactly the old number. I know the new number is 47.
Q. 8. Your wagon still has got the old number on it?
A. Yes, sir.
Q. 9. This is the number given to your wagon by the license collector, is it, of the city and county of San Francisco?
A. Yes. sir.
Q. 10. Did you have your wagon measured by the city and county surveyor?
A. Yes, sir.
Q. 11. What is the contents of your wagon, the capacity of it?
A. Three yard, three quarters.
Q. 12. Up to the top?
A. Full to the top.
Q. 13. Have you got a scale on the wagon showing that measurement?
A. Yes, sir.
Q. 14. Three and three-quarter yards, you say?
A. Yes, sir; three yards and three-quarters.
338 Q. 15. Who put that scale on showing the measurement?
A. There was a blacksmith and the surveyor.
Q. 16. That is the city and county surveyor?

A. The city and county surveyor.

Q. 17. Was it put on by a blacksmith under the direction of the city and county surveyor?

A. Yes, sir.

Q. 18. You deliver garbage to the crematory of the Sanitary Reduction Works, do you?

A. Yes, sir.

Q. 19. Can you testify as to the number of loads that you delivered there, and as to the amount of garbage that each load contained, and the prices that you paid to the crematory for receiving such loads?

(Objected to as incompetent, irrelevant and immaterial.)

A. Yes, sir, I have got it in a book here, some few loads, not very many. April 20——

Mr. PIERSON (interrupting): We object to the testimony as not responsive to the question; and also that the witness is reading his testimony from a book; also that it is irrelevant and immaterial.

(By Mr. HARDING:)

Q. 20. You say you delivered a load there on April 20th

A. Yes, sir.

(By Mr. PIERSON:)

Q. 21. 1899 was that? This year?

A. This year, yes.

339 (By Mr. HARDING:)

Q. 22. How much garbage did that load contain?

(The same objection.)

A. (Reading:) April 20th, yards three and a half, $1.10 I pay for it.

Q. 23. You paid $1.10 to the Sanitary Reduction Works for receiving it?

A. Yes, sir.

Q. 24. You are looking at a book or memorandum there. What is that? When did you make this memorandum?

A. I started it on the 20th. I put that down on the book. I put it down day by day.

Q. 25. That is, you put it down each day when you delivered a load there, you made a memorandum?

A. Yes, sir.

Q. 26. From which you are now testifying?

A. Yes, sir.

Q. 27. Your memorandum shows the number of cubic yards?

A. Yes, sir.

Q. 28. And the prices you paid for it?

A. Yes, I remember still what I put down, about ten minutes after. I had the book in my pocket.

Q. 29. Could you testify to these facts without looking at that memorandum?

A. No, sir; I can't testify without looking at the book. I can only remember—I can't remember one day to the other. I can't remember four or five or six days.

Q. 30. Now did you deliver any garbage there on April 21st?

340 (Objected to as incompetent, irrelevant and immaterial, and that the witness is reading his testimony from a book.)

A. (Reading:) Two loads garbage, two yards and a half, ninety cents each load.

Q. 31. You delivered two loads April 21st?

A. Yes, sir.

Q. 32. And each contained two yards and a half?

A. Two yards and a half; ninety cents each load.

Q. 33. And you paid ninety cents for each load to the crematory for receiving it?

A. Yes, sir.

Q. Now, did you deliver any on the 22d of April?

(The same objection.)

A. (Reading:) On the 22d, two yards and a quarter; I pay seventy-five cents. On the 24th, two yards and a half; eighty cents. On the 26th, three yards and three-quarters; $1.20.

Q. 35. Three yards and three-quarters?

(The same objection.)

A. (Reading:) Three yards and three-quarters; I had wagon full to the top; $1.20. On the 27th, one yard and a half; fifty-five cents; second load, two yards; sixty-five cents. On the 28th, two yards and a half; eighty-five cents; second load same day, 29th, two yards and a quarter; seventy cents. May 1st, two yards and a half, eighty cents. May 2d, two yards and a half, ninety cents. May 3d, three yards and three-quarters, $1. That is all.

341 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Are you sure that your wagon is number 47?

A. Yes, sir.

X Q. 2. How long have you had it?

A. How long have I had the wagon?

X Q. 3. Yes.

A. I got that number I think about—I can't say sure; I got this wagon pretty near two years and a half, that number.

X Q. 4. That same cart or wagon?

A. The same wagon; I had that same wagon for five years?

X Q. 5. And it has had that number 47 how long?
A. I can't testify how long; I know it was last summer.
X Q. 6. Have you a license for it?
A. Yes, I had a license.
X Q. 7. In your own name?
A. No, my partner get the license in his name; I drive the wagon.
X Q. 8. Is your partner's name Demartini?
A. Yes, sir.
X Q. 9. Guiseppi?
A. Guiseppi, yes.
X Q. 10. How long have you been in partnership with him?
A. Two years; it was two years last New Year's.
342 X Q. 11. You are not a party to this suit, are you, are not one of the parties to this suit?
A. Yes, sir, I have got four partners; I have two wagons.
X Q. 12. I don't think you understand me. Are you one of the people we have sued in this case?
A. Yes, sir.

Mr. HARDING: I don't think he understands; I am pretty sure he does not.

Examination-in-chief of JOHN DEVINCENZI, a witness called on behalf of defendants other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. What is your business?
A. Scavenger.
Q. 2. How long have you been in that business?
A. Pretty near eight years.
Q. 3. Do you use a cart or wagon in conducting the business?
A. Yes, sir.
Q. You go from house to house and gather garbage and refuse?
A. Yes, sir.
Q. 5. And has that wagon a number?
A. The wagon is numbered.
Q. 6. What is the number of your wagon?
A. Old number is 17749; new number it is 107.
Q. 7. Is that the number given to your wagon by the license collector here?
A. Yes, last summer, last July, I think it was.
343 Q. 8. When you pay a license you get a receipt containing the same number?
A. Yes, sir.
Q. 9. How long has that new number been there?
A. Since last July.
Q. 10. Did you ever have your wagon measured?

A. Yes, by the city surveyor.

Q. 11. For what purpose?

A. To find out how much it holds. It holds three yards and a quarter on the full to the top.

Q. 12. That is according to the measurement made by the city and county surveyor, is it?

A. Yes, sir.

Q. 13. You have got a scale on the wagon showing the measurement?

A. Yes, sir.

Q. 14. Do you deliver garbage at the works of the Sanitary Reduction Works?

A. Yes, sir.

Q. 15. Can you testify as to any loads that you have delivered there and the prices that you paid for them and the amount of garbage contained in such loads?

(Objected to as incompetent, irrelevant and immaterial.)

A. I started in March.

Mr. PIERSON: We object to the form of the answer as not responsive to the question; also that the witness is reading from a book; that the testimony is incompetent, irrelevant and immaterial.

A. I started in March 29, 1899. First load two yards and a quarter; sixty cents; second load, same day, two yards and a half; seventy cents.

344 (By Mr. HARDING:)

Q. 16. One minute. You are looking at some memorandum or book in testifying?

A. Yes, sir.

Q. 17. What is that book or memorandum?

A. I always put it down as soon as I pay it.

Q. 18. It is a memorandum that you made at the time?

A. Right away of course I put it down myself then; I carry the book with me. I got a box in the wagon. I put it down right away as soon as I pay it.

Q. 19. Every day you come down to deliver a load you make a memorandum in the book?

A. Yes, sir.

Q. 20. Can you testify without looking at that book?

A. Yes, sir.

Q. 21. Can you testify without looking at the book?

A. Yes, sir.

Q. 22. Then I would not use the book, if you can get along without it. I ask you the question. Can you testify here without using that book or memorandum?

A. Yes, certainly.

Q. 23. I don't think you understand my question. Do you remember everything in that book?

A. Yes, I remember because I write that down myself.

Q. 24. You remember it because you put it down?

A. Yes, sir.

345 Q. 25. You mean you know that it is correct because you put it down? You put it down so that you remember it.

A. Yes, I put it down and I remember it.

Q. 26. If you close your book can you remember what is in it?

A. No.

Q. 27. You have got to look at the book in order to testify.

A. No, I remember just the same. Of course I put it down half an hour or an hour after. I can remember just the same.

Q. 28. Go ahead.

Mr. PIERSON: We object to the testimony of the witness because he is reading from a book or memorandum. We object to the testimony as incompetent and irrelevant.

A. (Reading:) On the 28th, three yards; ninety cents. On the 29th, first load, one yard and three-quarters, fifty-five cents; second load, two yards and a quarter, sixty cents. On the 30th, first load, one yard and three-quarters, fifty-five cents; second load, same day, two yards and a half, seventy cents. On the 31st, first load, sixty-five cents, two yards and a quarter; second load, same day, two yards and a quarter, sixty-five cents again. On April 1st 1899, first load, one yard and three-quarters, fifty-five cents. On the 3d, first load two yards and three quarters, eighty cents, second load, two yards and a quarter, sixty-five cents. On the 4th one load, two yards and a half, seventy-five cents. On the 5th, one load two yards and

346 three quarters; eighty-five cents. On the 6th, first load two yards, sixty-five cents. On the 6th, same day second load, two yards and a quarter, sixty-five cents again. On the 7th, first load, two yards, sixty cents. On the same day second load, two yards and a quarter, seventy cents. On the 8th, one load one yard and three-quarters, fifty-five cents. On the 10th first load, two yards and a half, eighty cents; second load two yards and a quarter, seventy cents. On the 11th, two yards and a quarter, sixty-five cents. On the 12th, one load, three yards, eighty-five cents. On the 13th, first load, two yards, sixty cents; second load two yards sixty cents again. On the 14th, first load two yards and a quarter, sixty-five cents; second load two yards and a quarter, sixty cents. On the 15th, one yard and three quarters, fifty cents. On the 17th, two yards and a quarter, seventy-five cents; same day, 17th, second load, two yards, sixty-five cents. On the 18th, two yards and a quarter, sixty-five cents. On the 19th two yards and a half, eighty cents. On the 20th, first load two yards, sixty-five cents; second load, same day, sixty-five cents again. On the 21st, first load, two yards, sixty cents; second load same day, two yards and a half, seventy-five cents. On the 22d a load, one yard and three quarters, sixty cents.

On the 24th, first load, one yard and a half, fifty cents; second load, two yards and a half, seventy-five cents. On the 25th, one load, two yards and a quarter, seventy cents. On the 26th, two yards and a half, eighty cents. On the 27th, first load, two yards and
347 a half, seventy-five cents; second load, two yards and a quarter, sixty-five cents. On the 28th first load, two yards and three quarters, eighty cents, second load, 28th, two yards and a quarter, eighty cents. On the 29th, one yard and three quarters, fifty-five cents. May 1st, 1899, first load, two yards and a quarter sixty cents; second load, same day, two yards and a quarter, seventy cents. On the 2d, two yards, sixty cents. On the 3d, two yards and a quarter, seventy cents.

Q. 29. Mr. Devincenzi, you testified that the number of your cart was changed sometime in July, 1898?

A. Yes, sir.

Q. 30. Sometime in July, 1898?

A. 1898.

Q. 31. When did you have your cart measured by the city and county surveyor?

A. Last summer sometime; I ain't sure of the date.

Q. 32. Before or after the number of your cart was changed?

A. I ain't sure.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. You are one of the defendants in this case, are you?

A. Certainly.

(By Mr. HARDING:)

X Q. 2. Are you sued in this case, Mr. Devincenzi?

A. Yes, sir.

348 Examination-in-chief of PAOLO BAROSSI, a witness called on behalf of respondents other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. What is your full name?

A. Paolo Barossi.

Q. 2. What is your business?

A. Scavenger.

Q. 3. How long have you followed that business?

A. About five years.

Q. 4. Have you a wagon or cart in your business?

A. Yes, my partner pay license; I used to pay on the old number.

Q. 5. Has your wagon got a number on it?

A. Yes, number 26.

Q. 6. That is the new number?
A. Yes, sir.
Q. 7. What was the old number of your wagon?
A. 3622.
Q. 8. That number was given to the wagon by the license collector of the city and county?
A. 26, new number.
Q. 9. The old number was given to the wagon by the license collector?
A. Yes, sir.
Q. 10. When you pay the license you get a receipt with that number on it?
A. Yes, sir. My partner got it.
Q. 11. Have you ever had your wagon measured by the city and county surveyor?
A. Yes, sir.
Q. 12. Do you know how much garbage they hold?
A. Yes, three yards and a quarter at the top.
349 Q. 13. That is, when the wagon is full to the top?
A. Yes, when it is come to the top.
Q. 7. Do you deliver garbage to the Sanitary Reduction Works of San Francisco?
A. Yes, sir.
Q. 8. Can you state or testify as to any number of loads that you have delivered there and the amount of garbage that was contained in such loads, and the price you paid to the Sanitary Reduction Works for receiving the garbage?

(Objected to as incompetent, irrelevant and immaterial.)

A. Yes, I put it down on a book here.
Q. 9. You may testify.
A. March 27th, 1 load——

Mr. PIERSON (interrupting): We object to the testimony of the witness upon the ground that he is reading his testimony from a book; also that it is incompetent, irrelevant and immaterial.)

The WITNESS (continuing): March 27, 1 load.

(By Mr. HARDING:)

Q. 10. 1899? That is this year?
A. Yes, one yard and a quarter; thirty-five cents.
Q. 11. You are looking at some book or memorandum in testifying. Wasn't that—is that a memorandum that you made yourself?
A. Yes, a memorandum that I make myself.
Q. 12. When did you make that memorandum?
A. Every day when I dump.
350 Q. 13. Day by day?
A. Yes, sir.

Q. 14. Then it is a memorandum that you make every day when you go down and deliver garbage at the Sanitary Reduction Works?

A. Yes, sir.

Q. 15. Could you testify without looking at that memorandum? Could you state how much you paid each day and how much each load contained without looking at the memorandum?

A. I can't remember unless I look at the book.

Q. 16. You have got to look at it? You have got to look at the memorandum in order to state the facts?

A. Yes, sir.

Q. 17. Did you deliver any garbage there on March 28th?

(The same objection.)

A. (Reading:) Yes, March 28, two yards; sixty-five cents. March 29th, two yards, sixty cents. On the 30th, one load, one yard and three quarters, fifty cents. On the 31st, two yards and a quarter, sixty-five cents. April 1st, two yards and a quarter; forty cents. Then I didn't put it down until April 24th. On the 24th, one yard, thirty cents. On the 25th, two yards; sixty cents. On the 26th, one yard and three-quarters; sixty cents. On the 27th, one yard and a half; forty cents. On the 28th, two yards; sixty cents. On the 29th, one yard and a half; forty-five cents. May 1st, one yard; thirty-five cents. On the 2d, one yard and three quarters, fifty cents. On the 3d, one yard and a half, forty cents.

351 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Are you one of the defendants in this case?

A. Certainly.

X Q. 2. Is your partner's name Angelo Rustici?

A. Yes, my partner's name is Angelo Rustici.

X Q. 3. Do you own any part of this wagon number 28, or does your partner own it? Do you own this wagon number 26?

A. Yes, sir.

— Q. 4. You own it, or does your partner own it?

A. My partner.

X Q. 5. Oh, your partner owns it?

A. Yes, sir.

X Q. 6. You are only a driver, are you?

A. Yes, sir.

X Q. 7. Then you don't own any part of the wagon yourself, your partner owns the wagon and you drive the wagon?

A. My partner.

Examination-in-chief of FRANK FRAVEGA, a witness called on behalf of the respondents other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. What is your full name?
A. Frank Fravega.
Q. 2. Your business, Mr. Fravega?
A. Scavenger.
Q. 3. How long have you been scavenger?
352 A. Four years.
Q. 4. You have got a cart or wagon that you use in the business?
A. Yes, sir.
Q. 5. What is the number of your cart?
A. 62.
Q. 6. Is that what is known as the new number?
A. That is the new number.
Q. 7. What is the old number?
A. 5268.
Q. 8. Did you have this cart measured by the city and county surveyor?
A. Yes, sir.
Q. 9. Do you know how many cubic yards it contains?
A. 3.
Q. 10. Now, Mr. Fravega, can you testify as to any loads of garbage that you delivered at the Sanitary Reduction Works?
A. Yes, sir.
Q. 11. Do you take garbage there every day?
A. Yes, sir.
Q. 12. Every day, do you?
A. Yes, sir.
Q. 13. Can you testify as to any loads that you have delivered there? And how many cubic yards they contained, and what you paid them?
A. Yes, sir.
Q. 14. Did you deliver any garbage there in the month of March?
(Objected to as incompetent, irrelevant and immaterial.)
A. Yes, sir.
Q. 15. What day?
(The same objection.)
A. The 29th.
353 Q. 16. March 29th?
(The same objection.)
A. Yes, sir.
Q. 17. 1899? That is this year?

(The same objection.)

A. Yes, sir.

Mr. PIERSON: We make the further objection on the ground that the witness is reading his testimony from a book.

(By Mr. HARDING:)

Q. 18. How many cubic yards?

A. I just put the day down.

Q. 19. You have not got a memorandum of the number of cubic yards?

A. I got it marked down on the 29th, one day.

Mr. PIERSON: Your name is Francesco, is it, not Frank?

A. Yes, sir.

(It appearing that the witness was unable to testify as to the amount of garbage delivered, he was withdrawn.)

Examination-in-chief of FRANCESCO BARGAGLIOTTI, a witness called on behalf of respondents other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. What is your business?

A. Scavenger.

Q. 2. How long have you been in that business?

A. I have been in it over tyelve years.

Q. 3. Do you use a wagon or cart in your business?

A. Wagon.

Q. 4. Has your wagon got a number on it?

354 A. Yes, it has got a number.

Q. 5. What is that number?

A. 17,711 is the old number.

Q. 6. What is the new number?

A. New one is 121.

Q. 7. Do you know how much garbage your wagon holds?

A. About three yards.

Q. 8. Three yards?

A. Three yards, cubic yards.

Q. 9. Did you have your wagon measured by the city and county surveyor?

A. Yes, sir.

Q. 10. That is, according to his measurement, it holds three yards?

A. Yes, sir.

Q. 11. Do you deliver garbage to the crematory of the San Francisco Reduction Works?

A. Yes, sir.

Q. 12. Can you testify as to any loads that you delivered there,

the amount of garbage each of these loads contained and how much you paid the Sanitary Reduction Works for cremating it, or receiving it from you?

(Objected to as incompetent, irrelevant and immaterial.)

A. Yes, I can. On the 27th of March, it was three yards and a quarter.

Mr. PIERSON: We object on the ground that the witness is reading his testimony from a book, also that it is incompetent, irrelevant and immaterial.

The WITNESS (continuing): March 27th was two yards and a quarter, seventy-five cents.

355 (By Mr. HARDING:)

Q. 13. You are looking at some book or memorandum to testify?
A. Yes, sir.
Q. 14. What is that?
A. That is the day I write it down in Italian because I can't read English. It is the 27th of March, two yards and a quarter; I pay seventy-five cents.
Q. 15. You wrote that on the day that you went to the crematory?
A. Yes, when I come I measure my dirt, my garbage, when I come back I put it down on my book how much I got and I put it down how much I pay.
Q. 16. Each day put down what you gave?
A. Every day I go there.
Q. 17. Every day you go yourself?
A. Some day my partner go, then I don't do it because I got the book myself. When I go I do it. I put it down every day; same all time, about the same.
Q. 18. When did you go there the next time?

(The same objection.)

A. (Reading:) Next time on the 28th, two yards and three-quarters, $1. On the 30th, two yards and a quarter, eighty-five cents. On the 1st of April, two yards and three-quarters, ninety cents; second load, 1st of April, two yards, seventy cents. On the 24th of April——

Q. 19. (Interrupting:) The 24th of April?

A. Yes; I no go on the dump after that. On the 24th of April, two yards and a half, eighty cents. April 25th, two yards and
356 three-quarters, ninety cents. April 27th, two yards and a quarter, seventy cents. April 29th, two yards and a half, eighty cents. 29th April, one yard and three quarters, fifty cents. May 1st, two yards, sixty-five cents; May 2d, two yards and three-quarters; eighty cents. That is all what I got.

(By Mr. PIERSON:)

Q. 20. You are one of the defendants in this case, are you not?
A. Yes, sir.

Examination-in-chief of MICHAEL HART, a witness called on behalf of respondent, California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. Where do you reside?
A. On Brannan street, between 8th and 9th.
Q. 2. How long have you resided there?
A. Twenty-four years since I came into that block, sir.
Q. 3. Are you a property owner in that vicinity?
A. Yes, sir.
Q. 4. What properties do you own there or near there?
A. I own 75 feet on 8th street between Brannan and Bryant.
Q. 5. Improved property?
A. I have fifty feet improved property, and one vacant lot.
Q. 6. Do you own other improved properties there?
357 A. Yes, on Chessley street I own some property, on Eldridge off Chessley.
Q. 7. What business do you engage in at the place where you state you reside?
A. I am in the liquor business, sir.
Q. 8. And you live in the same building in which your business is conducted?
A. Yes, sir.
Q. 9. Are you a married man?
A. Yes, sir.
Q. 10. What family *family* have you?
A. A wife and three children.
Q. 11. How far is your residence from the crematory of the Sanitary Reduction Works?
A. Something in the vicinity of three blocks, two and a half or three blocks.
Q. 12. That is three blocks or three blocks and a half from the crematory?
A. Two blocks and a half, or three blocks.
Q. 13. Two blocks and a half or three blocks from the crematory?
A. Yes, that is as near as I can get at it.
Q. 14. Do you remember when the crematory was built?
A. Yes, sir.
Q. 15. Did you reside at that time where you reside now?
A. Yes, sir.
Q. 16. And you have resided there ever since until the present time?
A. Yes, sir.

Q. 17. You may state to the court if you know whether or
358 not the smoke that goes from the crematory is a source of annoyance to you at your place, if so, the degree of annoyance and how frequently it occurs.

(Objected to as incompetent, irrelevant and immaterial.)

A. Whenever the wind blows towards me from the crematory, and on several times I have to shut my door in the morning for the terrible smell. If it is a calm morning, the stench is that bad that it almost knocks you down, and several times I have had to shut my door in my place of business until some person would come to the door and rap that he wanted something.

Q. 18. You had to shut your saloon door you say?

A. Yes, I did that more than once; a couple of times there I didn't know what to do, in fact. I was almost crazy with the smell. All the time my wife is complaining right along since that place is built and I blame that crematory for her health; she is very delicate in health.

Mr. PIERSON: I move to strike that out on the ground that it is the opinion of the witness and not a fact that he is testifying to.

(By Mr. LEAMING:)

Q. 19. State whether or not the stench is of such a nature that it is sickening in its character, nauseating.

(Objected to as incompetent, irrelevant and immaterial.)

A. It is, sir. There is chunks of half-burned paper falls on the sidewalk all around when the wind blows in that direction.

359 Mr. PIERSON: I move to strike that out as not responsive to the question.

(By Mr. LEAMING:)

Q. 20. What kind of paper falls upon your place from the crematory?

(Objected to as incompetent, irrelevant and immaterial.)

A. Loose paper and such things.

Q. 21. Paper partially burned or charred?

(The same objection.)

A. Yes, sir.

Q. 22. Where does that paper come from?

(The same objection.)

A. I can see it coming right from the chimney, going along and dropping down.

Q. 23. Coming from the smoke stack of the crematory?

(The same objection.)

A. Yes; oftentimes I watch it coming.

Q. 24. Is it at such times that the stench is annoying?

(The same objection.)

A. Yes, sir.

Q. 25. About how frequently does the wind blow in that direction so that the stench annoys you in the manner you have stated?

(The same objection.)

A. In the winter time it seems to me it is oftener than in the summer time. The wind blows from the northwest in the summer time most of the time, but in winter the wind in winter it comes
360 from the south and we catch it, south and east most. If it is a calm morning, the smoke drops right down where I live.

Q. 26. And is that when it is west?

(The same objection.)

A. Yes, sir.

Q. 27. When there is not much wind?

(The same objection.)

A. Yes, sir; if the wind is high and strong, it will blow over but if it is a calm morning, it drops right down.

Q. 28. What direction is your house, place of residence, from the crematory?

(The same objection.)

A. It ain't quite south. My place is south and a little southeast.

Q. 29. State to the court whether or not this stench that you refer to occurs in the night-time as well as the daytime?

(Objected to as leading and also on the same grounds as before.)

A. Just the same in the night as in the daytime. When the wind blows in that direction it is very bad. You can't stand the smell of it. We have got to stand it, but it is very disagreeable.

Q. 30. How long has that been the case?

(The same objection.)

A. Ever since the crematory was built there.

Q. 31. And operated, I suppose? Ever since it is run, I suppose you refer to?

A. Yes, sir.

361 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. What is the number of your saloon?

A. 924 Brannan street.

X Q. 2. Is that a one-story house or a two-story house?

A. A one-story house, sir.

XQ. 3. You live at the back of your saloon, do you?
A. Yes, sir.
XQ. 4. You say that this smell that comes from the smoke stack of the crematory is most annoying in the summer time or in the winter time?
A. In summertime most.
XQ. 5. Do you ever have any trouble with it in summer time?
A. Oh, yes, once in a while, whenever the wind comes in that direction you can always tell about it.
XQ. 6. You mean when the wind comes from the south?
A. South, or southeast.
XQ. 7. Now, in the summer time when the wind comes from the east you don't have any trouble, do you?
A. No, sir.
XQ. 8. If the wind is not blowing at all, do you have any trouble?
A. Not if the wind is not blowing at all.
XQ. 9. From any direction?
A. Oh, I don't know about that. I am too far away; then I guess it would go right up in the air.
XQ. 10. What I am trying to get at is this: I understand
362 your complaint is that when it is calm this smell settles down and you smell it?
A. Yes, sir.
XQ. 11. But if the wind is blowing at all in any direction it carries it over you?
A. When it is a strong wind it is not so bad as when it is calm.
XQ. 12. That is what I understand. Now, in the summer time, it blows from the west all summer does it not? It blows from the west and it passes over you?
A. If it is a good strong wind.
XQ. 13. It is only when it is calm weather that this smoke settled down on your place?
A. It is only when it is calm weather that it settles down on my place; when the wind is blowing strong, pieces of paper from the garbage drops on the sidewalk, pieces that comes out of the chimney. They come down gradually, and drop all over down there.
XQ. 14. How much of it?
A. Oh, not much, sir, but it is more or less all the time.
XQ. 15 Do you mean that it is afire when it drops.
A. Is it afire? No, sir.
XQ. 16. Is this paper partially consumed?
A. Yes, burned, half burned.
XQ. 17. How much of it?
A. Oh, not much; still it drops. I can see it drop; it comes from the chimney. I can see it coming.
XQ. 18. How much of it comes around your place?
A. Oh, not a big pile of it, perhaps 3 or 4 pieces on the
363 sidewalk in the morning when I get up, in the winter time right at the door.

X Q. 19. Now, in a direct line you testified that your place is two and a half or three blocks in a direct line, right in a straight line? How far are you from that smokestack, the smokestack to this place?

A. It is close to three blocks.

X Q. 20. How many feet would you think your saloon was from that smokestack?

A. From my house to Townsend street is a block, then from Townsend street to Channel street—I can't tell the name of the blocks because the blocks are broken up there. It is close to three blocks altogether.

X Q. 21. How many feet would you say it was?

A. Oh, the feet I could not say, sir. I don't know how many it is, sir. I suppose these blocks are about 500 feet, or 600 feet altogether.

X Q. 22. Then you would think it was about 1500 feet in all?

A. I would not say, sir, but I know it is all of that.

X Q. 23. And you say your place is south of the smokestack?

A. A little southeast.

Examination-in-chief of H. H. SENGSTACKEN, a witness called on behalf of the defendant, California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. Now will you state the place where you reside?

A. I reside on Bryant street between 8th and 9th.

364 Q. 2. In this city and county?

A. In this city and county, San Francisco.

Q. 3. What is the number of your house?

A. 1034, Bryant.

Q. 4. Are you a married man?

A. Married man nnd have a family.

Q. 5. A wife and children?

A. A wife and children.

Q. 6. Do you own the property where you reside?

A. Yes, sir.

Q. 7. Do you own any other property in that vicinity?

A. No, sir. I own a three-story house there.

Q. 8. That is the one you reside in?

A. I have three families in the house.

Q. 9. How long have you resided there?

A. Twenty-one years.

Q. 10. What is your business?

A. I am doing nothing now; I ran a sugar boiler before.

Q. 11. What direction is your house from the crematory of the Sanitary Reduction Works?

A. Southeast. When the wind comes from the southeast we get the smell down there.

Mr. PIERSON: I move to strike that out as not responsive to the question.

(By Mr. LEAMING:)

Q. 12. A southeast wind blows from the crematory to your place?
A. Yes, sir.
Q. 13. How far is your residence from the crematory?
A. Well, in a straight line it is about three blocks.
365 Q. 14. By crematory you refer to the garbage cremating works of the Sanitary Reduction Company Works, do you?
A. Yes, sir.
Q. 15. And the distance you gave is about the distance from the smokestack to your place?
A. Yes, about three blocks in a straight line.
Q. 16. You may state whether or not you are annoyed at your place of residence by reason of any conditions that arise at the works of the Sanitary Reduction Company.

(Objected to as incompetent, irrelevant and immaterial.)

A. Yes, when the wind is in the south or southeast, or when the wind is still it blows the smell right from the chimney to my house.
Q. 17. What kind of a smell?

(The same objection.)

A. A kind of a funny smell, a strong smell.
Q. 18. Can you tell where that smell comes from?

(The same objection.)

A. It comes from the crematory and chimney.
Q. 19. From the chimney or smokestack of the crematory?

(The same objection.)

A. Yes, sir.
Q. 20. Can you state whether or not any partially consumed garbage or papers come from that smokestack at times?

(The same objection.)

366 A. Well, from some paper that is in there—pieces of paper come around there in the yard.
Q. 21. Pieces of paper come from the smokestack and fall in the yard? Partially burned papers do you mean?

(The same objection.)

A. Yes, it is black; it is not really burned up.
Q. 22. Partially burned?

(The same objection.)

A. Yes, sir.
Q. 23. State to the court the degree of odor as nearly as you can

of which you complain, whether it is a strong smell or an unpronounced smell or an intense smell. Give the court an idea as nearly as you can of the character of the smell you complain of.

(The same objection.)

A. Well, it is a stink, a stinking smell; it is a regular stink that goes out of the chimney, a very funny smell. I have to close the windows all the time when it comes around.

Q. 24. You call it simply a plain, ordinary stink?

(The same objection.)

A. Yes; nobody likes it. It isn't healthy neither.

Q. 25. You find it necessary at times to close the doors and windows on account of it?

(The same objection. Also that the question is leading.)

A. Close the doors and windows.

367 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. I understood you to say that this annoys you most when the wind is blowing? Or was it when the wind doesn't blow?

A. When there is no wind at all, then you are sure to smell it. Then when the wind comes from the south. When you have a northwest wind there is no trouble. But in the night-time when there is no wind you can smell it right away.

X Q. 2. When the wind comes from the south, is it?

A. When the wind comes from the south too.

X Q. 3. Now, if it is a strong wind from the south, does it trouble you?

A. Not so much. It goes over.

X Q. 4. It is only when it is calm?

A. Yes, sir.

Mr. PIERSON: That is all.

Examination-in-chief of HENRY HEITMULLER, a witness called on behalf of respondent, California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. Where do you reside?

A. 8th street, 492 8th street.

Q. 2. In this city?

A. Yes, sir.

Q. 3. Are you a man of family?

A. I have, yes, sir.

Q. 4. You have a wife and children?

A. Yes, sir.

368 Q. 5. Do they reside with you at the place you name?
A. They do, yes, sir.
Q. 6. How long have you resided there?
A. A little over twenty-four years.
Q. 7. Are you a property owner?
A. Yes, sir.
Q. 8. Do you own the property where you reside?
A. Yes, sir.
Q. 9. You say you do?
A. Yes, I do.
Q. 10. Do you own any other property in that vicinity?
A. I own seventy-five feet over there; that is all. I have some families there in the house.
Q. 11. Yes, but do you own any other property except the property in which you reside?
A. Yes, I own some on Geary street.
Q. 12. But no other property in that vicinity?
A. No, not in that.
Q. 13. Is that a thickly settled community where you reside? Is it built up?
A. It is built up a little. I have got my own building up and there is some vacant lots. They don't build up much because it is sickly on account of this smoke at times.
Q. 14. Is it thickly settled now?
A. Well, I got a 3-story and a 2-story house; that is all. There is a butcher shop next door and there is some vacant lots too.
Q. 15. What I wish to ask is whether or not the property for several blocks around is built up, occupied by people who live there?
A. Yes, sir.
369 Q. 16. It is?
A. Yes, sir.
Q. 17. How far is your residence from the smoke-stack of the Sanitary Reduction Works?
A. About four blocks, something like that; maybe a little more.
Q. 18. But in what direction?
A. Just north, north of the smokestack, I think; northwest.
Q. 19. So that a southwest wind would come from the crematory to your property?
A. Yes, sir.
Q. 20. Or a southerly wind?
A. Yes.
Q. 21. You may state to the court whether or not you at your place suffer any annoyances of any character that are occasioned by the works of the Sanitary Reduction Works, and if so, what?
(Objected to as incompetent, irrelevant and immaterial.)
A. Sometimes when I just want to look out the window, I have to close it as fast as I can. I can't stand the smell when we get

that kind of a wind. I find if there is no wind at all, then we get the smell of it too, when no wind is there at all.

Q. 22. Where does the smell come from that you mention?

(The same objection.)

A. It comes from the chimney there.

Q. 23. From the chimney of the Sanitary Reduction Works?

A. Yes, sir.

370 Q. 24. And when the wind is in your direction you get the smell do you?

(The same objection.)

A. If it comes from the south or southeast, you know, then we get the smell.

Q. 25. Is it an annoying smell?

(The same objection.)

A. Yes, sir.

Q. 26. State the character of the smell. Is it a strong, knock-down smell, or is it a light smell?

(The same objection.)

A. Yes, it is a pretty strong smell.

Q. 27. How strong?

(The same objection.)

A. I can't tell you that; it troubles my family more than me. I can smell it; I close the window as fast as I can.

Q. 28. You smell it right through when the windows are down?

A. Oh, well you can smell it a little afterwards too, but then it stops it some when the windows are closed.

Q. 29. Does the smell come there in the day time and in the night-time both?

A. Yes, it depends on the wind; that is all. Mornings or nights, you know, it is worst, morning or nights. Sometimes when there is no wind or when the wind is in the southeast, then we smell it. When you get a north wind then you don't smell it at all. We don't get any of it. Somebody else gets it then, I guess, over the hills there.

371 Examination-in-chief of PETER J. DENNER, a witness called on behalf of respondent California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. Where do you reside?

A. Number 24 Heron street.

Q. 2. In this city?

A. In the city of San Francisco.

Q. 3. How long have you resided there?

A. For the last thirty years.
Q. 4. That means that you were born there, I presume?
A. I was born there.
Q. 5. You reside there with your parents?
A. I reside there with my parents, yes, sir.
Q. 6. Do you know where the works of the Sanitary Reduction Works are?
A. I knew where they are pretty near to me, but I can't tell you what street it is.
Q. 7. Do you know which way they are from your residence?
A. Well, from my residence they are southeast.
Q. 8. And how far away from where you reside?
A. Well, as close as I can calculate it is about six blocks; it might be a little more; I can't tell exactly.
Q. 9. You may state to the court whether or not you suffer any inconveniences or annoyances at your place by reason of the location of the works of the crematory?

(Objected to as incompetent, irrelevant and immaterial.)

372 A. Well, there is very often, you might say continually, there is some stench comes from it, and then there is some charred paper flies over from the crematory—that is, it drops into the street and drops into the yard and on the porch, and the stench sometimes it is almost impossible to stand it. You have to close the windows to keep it out of the house because you can't stand it. It is not what you might say every day, but just according as the wind blows.
Q. 10. On what kind of a day do you find the stench worst?

(The same objection.)

A. Generally when the wind is southeast.
Q. 11. And do you find it worse when the wind is light or when it is strong?

(The same objection.)

A. When we have got heavy weather then the stench is more severe than it is when we have got light weather, that is, light air.
Q. 12. You find it worse in your place when it is blowing from the southeast?

(The same objection.)

A. That is right.
Q. 13. In your direction?

(The same objection.)

A. Yes, sir.
Q. 14. What kind of a smell is that you refer to?

(The same objection.)

373 A. Well, it is a very sickening smell. I don't know how to express myself.

Q. 15. Is it such a smell as is calculated to nauseate you, to make you sick at your stomach?

(The same objection.)

A. It sickens your stomach, yes.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Do you note this smell much when it is a calm day, Mr. Denner, when the weather is calm?

A. You notice it when the wind comes over from that vicinity, when the wind don't blow from the southeast. You can notice it on a calm day too.

X Q. 2. I know, but is it noticeable on a calm day?

A. Not so much as if it is a strong wind.

X Q. 3. The result then is that if it is blowing strong from the southeast then it is very annoying?

A. Yes, it is very annoying.

X Q. 4. Is it very annoying if it is a strong wind from the west?

A. You smell it, but not the same.

X Q. 5. Does it annoy you when the wind blows from the southwest?

A. Not that I know of.

X Q. 6. Then it is when the wind blows from the southeast that it annoys you?

A. That it annoys me.

374 Examination-in-chief of AUGUST VETTER, a witness called on behalf of respondent California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. Where do you reside, Mr. Vetter?

A. Number 10, McLee court, off 9th street, between Bryant and Harrison.

Q. 2. What is your business, Mr. Vetter?

A. Blacksmithing and horseshoer.

Q. 3. Is your place of business in the same locality that you have given?

A. No, it is on 9th, near Brannan.

Q. 4. How far is that from where you reside?

A. About a block and a half.

Q. 5. Do you know where the smokestack of the Sanitary Reduction Works is?

A. Yes, sir.

Q. 6. What direction is that from your place?

A. I think it is northwest.

Q. 7. About northwest from where you live, and also from where you work?

A. Yes, sir.

Q. 8. Are you in business for yourself?

A. Yes, sir.

Q. 9. How long have you resided where you now reside?

A. About eighteen years.

Q. 10. And how long have you been in business where you are now in business?

A. About twenty-two years.

Q. 11. Are you a property owner?

A. Yes, sir.

375 Q. 12. Do you own a number of pieces of property in that vicinity?

A. I own two lots where I live, two houses; then I own some more on Brannan between 8th and 9th.

Q. 13. Improved property?

A. Yes, sir.

Q. 14. Now, how far from the smokestack of the Sanitary Reduction Works do you live?

A. I guess about between four or five blocks.

Q. 15. Is your place of business any further than that or nearer?

A. No, it is nearer.

Q. 16. How much nearer?

A. About a block and a half.

Q. 17. But in the same general direction from the crematory?

A. Yes, sir.

Q. 18. State whether or not at your residence and place of business you suffer any annoyances that come from the crematory?

(Objected to as incompetent, irrelevant and immaterial.)

A. Well, it is about a year ago, about a month after that crematory was built that I had a son eighteen years old, and he was always healthy. Then he got sick all at once, about a month after it was built. Most everybody that came down in that direction had to have doctors and they are always complaining of the stench and smell. Of course the smell is very bad. I talked with the doctor about it. He went down twice to examine it and he told me it is no doubt that his sickness had something to do with the crematory.

376 Mr. PIERSON: I move to strike that out as hearsay and not responsive to the question.

(By Mr. LEAMING:)

Q. 19. Continue, Mr. Vetter, and state what annoyances you have experienced or suffered that have come from the crematory.

(The same objection.)

A. Of course, the boy was sick then about three months, and then he died.

Q. 20. You refer to another boy?

(The same objection.)

A. My own son. And of course then, afterwards there was more or less sickness in the family. I had a large family. I had twelve living children; I had at that time. It was especially during the fall and winter that they were more or less sick. I had one boy I could not send him to school the whole winter on account of that he was sick. Everybody around the neighborhood complains that it is sickly; my family and everybody in the neighborhood complains

Mr. PIERSON: I move to strike that out on the ground that it is hearsay, the statement what everybody in the neighborhood says; also that it is not responsive to the question.

(By Mr. LEAMING:)

Q. 21. State to the court whether any stench or smell comes from the crematory?

A. Yes, sir; the smell is awful, especially sometimes in the evening, lots of days together, when the weather is kind of low,
377 when you go down in that direction it smells very strong, pretty bad.

Q. 22. It is a very bad smell is it? State about how it is; is it sickening or not?

A. It is enough to make people sick; of course, but it don't affect me, but my children it affects a great deal.

Q. 23. State whether or not any partially consumed garbage or paper comes from the smokestack to your place of business and to your residence.

(The same objection.)

A. Yes, very often, and some papers that is kind of half burned. You can see it come right out of the smokestack and it fall over the houses around there.

Q. 24. State whether or not you ever find it necessary to close up your house on account of the stench?

(Objected to as leading, also as incompetent, irrelevant and immaterial.)

A. Yes, sir.

Q. 25. Do you say you do at times?

(The same objection.)

A. You can't leave no windows open in day or night.

Q. 26. You can't leave windows open there at night? Why?

A. Because the stench comes in and your whole house is full of smell.

Q. 27. Then you find it necessary to close the windows as a precaution against the smell coming in at night, do you?
A. Yes, sir.

378 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. In what direction is the smokestack of the Sanitary Reduction Works from your house and place of business?
A. Well, we live on Mission street; it is just about straight on, we live on Mission. It is down in the same direction.
X Q. 2. You say you live on Mission street?
A. Yes, it is I think south of the smokestack; it is about south.
X Q. 3. The smokestack is southeast from your house and shop?
A. Yes, about.
X Q. 4. About how far in feet? How many feet would you say it was?
A. Well, the blocks ain't laid out pretty well there. From Brannan is three or four blocks if you go right straight through, it is about three blocks from my place. Of course I don't know how much a block is there exactly.
X Q. 5. Do you know whether it is 300 or 400 or 500 feet?
A. Well, one block between Brannan and Channel, that is 275 feet deep, that one block. Now there is about three more blocks like that.
X Q. 6. Well, it is something like about 1,000 feet, is it?
A. It is something like 1,000 feet.
X Q. 7. And that is southeast from you?
A. Yes, it is southeast.
379 X Q. 8. Now, this smell that you speak of, do you ever smell this during the summer time.
A. Not when the wind comes the other way, but when the wind comes from where the smokestack is we smell it.
X Q. 9. It would not come towards your house if the wind was from the west?
A. No, not if the wind was from the west.
X Q. 10. Are you ever troubled with that smell at all except when the wind is from the southeast?
A. When the wind comes from the southeast then it is bad.
X Q. 11. That is in the winter time, is it?
A. Sometimes in summer time too; it depends on how the wind blows.
X Q. 12. Do we ever have winds from the southeast in summer time? You have lived here a long time.
A. Yes; once in a while.
X Q. 13. Do you think that we have winds from the southeast in the summer time? The trade winds come from the west, do they not, in summer time? They don't come from the southeast, do they?

A. Only when the wind blows over the Potrero we don't smell it.

X Q. 14. If it is a north wind you don't smell it?

A. No, sir.

X Q. 15. So it is only when the wind blows from the southeast that you are troubled with it?

A. Yes, sir.

380 X Q. 16. You have a suit against the Sanitary Reduction Works, haven't you? A suit pending now?

A. Yes, sir.

X Q. 17. In which you claim damages for this nuisance as you claim it.

A. I don't claim no damages.

X Q. 18. You don't claim damages?

A. No, sir.

X Q. 19. Your idea is to get an injunction in that case against maintaining this chimney?

A. Something that don't injure my family any more. Last fall I had to send some of them in the country. I have to send them again.

X Q. 20. You brought that suit then to enjoin the Sanitary Reduction Works from conducting that business out there?

A. Yes, sir.

Redirect examination.

(By Mr. LEAMING:)

R. Q. 1. In the suit that Mr. Pierson has referred to, you seek to procure an injunction upon the ground that the Sanitary Reduction Works is a nuisance?

A. Yes, sir.

R. Q. 2. That is correct, is it?

A. Yes, sir.

R. Q. 3. And that case is pending in the superior court of this city and county at this time, is it?

A. Yes, sir.

381 Examination-in-chief of HENRY C. FARQUHARSON, a witness called on behalf of respondents other than the California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. Mr. Farquharson, what is your occupation?

A. Deputy clerk of the board of supervisors.

Q. 2. As such are you the legal custodian of documents and records of the board of supervisors?

A. Yes, sir.

Q. 3. Have you with you the resolution number 13,231, third series, passed by the board of supervisors?

A. Yes, sir. (Producing a book.)
Q. 4. Is it contained in this book?
A. Yes, sir.
Q. 5. I want to offer that resolution in evidence. Can you furnish us with a certified copy of that resolution, certified by the clerk of the board of supervisors?
A. Yes, sir.

Mr. PIERSON: We object to this resolution number 13,231, third series, upon the ground that it is irrelevant and immaterial, and that the franchise of the complainant cannot be attacked collaterally by this character of evidence.

(Subject to the last objection, it is stipulated between counsel that a copy of this resolution, certified to by the clerk of the board of supervisors, may be offered as an exhibit, to be marked "Respondents' Exhibit No. 3.")

(By Mr. HARDING:)

Q. 6. Have you with you a copy of the notice of publication by the clerk of the board of supervisors, setting forth that ap-
382 plication had been made for the franchise, and referring to resolution number 13,231, and that a franchise would be offered for sale in pursuance of that notice?
A. Well, I didn't bring it down. Here is one attached to one of the original proposals. (Producing.)

Mr. HARDING: We offer that in evidence.
Mr. PIERSON: We object to that upon the same grounds as are stated to the offer of Exhibit No. 3.

(Subject to the objection, it is stipulated between the respective parties that a certified copy may be introduced in evidence and marked "Respondents' Exhibit No. 4.")

(By Mr. HARDING:)

Q. 7. Now, Mr. Farquharson, can you state whether or not in pursuance of that notice any offers or bids were received by the board of supervisors for the franchise mentioned in Respondents' Exhibit No. 4.

(The same objection.)

A. Yes, sir.
Q. 8. Have you those applications with you?

(The same objection.)

A. Yes, sir, here are the three proposals. (Producing.)

Mr. HARDING: We will offer in evidence the three proposals, the first one being that of L. V. Merle.
Mr. PIERSON: We object to this proposal of Mr. Merle upon the same grounds as were last stated.

(Subject to the objection, it is stipulated between counsel
383 that a certified copy may be introduced in evidence and marked "Respondents' Exhibit No. 5.")

Mr. HARDING: The second proposal is that of F. E. Sharon.

Mr. PIERSON: We object to that on the same grounds.

(Subject to the objection, it is stipulated between the respective counsel that a copy may be filed as an exhibit, to be marked "Respondents' Exhibit No. 6.")

Mr. HARDING: The next proposal is that of A. M. Skelly.

Mr. PIERSON: We make the same objection.

(Subject to the objection, it is stipulated between counsel that a certified copy may be introduced in evidence and marked "Respondents' Exhibit No. 7.")

(By Mr. HARDING:)

Q. 9. Mr. Farquharson, I notice that in these proposals for the franchise, or bids for the franchise, in each of them is a mention made of a certified check. For instance, the proposal of A. M. Skelly states that "a certified check for the sum of $1005 is herein enclosed, payable to the clerk of your honorable board." Do you know as a matter of fact whether a certified check of that kind was deposited with the clerk of the board of supervisors?

A. I would not be positive about that. I can ascertain at the office. The subpœna did not call for any information of that kind.

384 Q. 10. Have you here a book entitled "Municipal Records of San Francisco, 1895–'6?"

A. Yes, sir. (Producing.)

Q. 11. Is that a book published under authority of the board of supervisors of the city and county of San Francisco?

A. Yes, sir.

Q. 12. As an official report of the proceedings of that board and all other departments of the municipality?

A. Yes, sir.

Mr. HARDING: I offer that book in evidence, and specially refer to certain portions thereof which I will name.

Mr. PIERSON: We make the same objection.

(Marked "Respondents' Exhibit No. 8.")

(By Mr. HARDING:)

Q. 13. I refer you to page 185 of the appendix of that book. There is a statement there that "on February 20, 1896, A. M. Skelly withdrew the check filed with his proposal, and on February 25th, 1896, L. V. Merle withdrew his check." I have offered that book in evidence, and I offer in particular the portion of page 185 of said book reading as follows: "On February 20, 1896, A. M. Skelly withdrew the check filed with his proposal and on February 25, 1896, L. V.

Merle withdrew his check. On February 18, 1896, the clerk of the board paid into the treasury of the city and county the sum of twenty-five hundred and ten ($2510) dollars, being the amount bid and received from F. E. Sharon in cash for said franchise, in addition to the other consideration of percentage to be paid annu-
385 ally to the city and county on the gross annual receipts. On February 21, 1896, F. E. Sharon filed in writing a communication accepting the conditions and provisions of order No. 2965, granting him a franchise for the disposal of garbage, etc."

Mr. PIERSON: We object to that as irrelevant and immaterial. Complainants' franchise cannot be attacked collaterally by any evidence of that character; also that it is hearsay.

Mr. HARDING: We also offer in evidence the following on page 179 of the municipal records of 1895–'6, appendix, beginning "Franchise for the cremation of garbage for sale. Clerk's office, board of supervisors, San Francisco, November 26, 1895. Whereas, application has heretofore been made," etc., then follows copy of notice, being Respondents' Exhibit No. 4.

Mr. PIERSON: To both of which we make the same objection.

Mr. HARDING: Through the conclusion of the copy of said notice on the following page, 180. Then it goes on to say: "At which meeting three proposals were received, accompanied by certified checks on the respective amounts bid, as follows: L. V. Merle, $5,500 for the franchise. F. E. Sharon, $2,510 for the franchise; also two per cent. per year on the annual gross receipts for the first fifteen years, and each succeeding year five per cent. of the gross receipts. A. M. Skelly, $1,105 for the franchise; also one per cent. per
386 year on gross receipts for the first fifteen years, two per cent. per year for the next *next* ten years and three per cent. per year for each year thereafter during the continuance of franchise.

Mr. PIERSON: We object to that on the same grounds as last stated.

Mr. HARDING: We also offer that portion of the municipal report, 1895–'6, on page 182 of the appendix thereof, reading as follows: "The proposal- received were referred to the committee on health and police; the said committee, on February 3, 1896, reported in favor of awarding to L. V. Merle the franchise for the cremation, etc., of garbage, he being, in the opinion of the committee, the highest and best bidder. The committee at the same meeting introduced an order so awarding the franchise, which was, on motion of Supervisor Dimond, laid over for one week. At the next meeting of the board, held on February 10, 1896, the order so awarding the franchise was again laid over one week on motion of Supervisor King. At the meeting of the board held on February 17, 1896, the order purporting to grant the franchise to L. V. Merle was taken up. Thereupon, on motion of Supervisor Dimond, a substitute order granting the franchise to F. E. Sharon was adopted and numbered 2965, Supervisors Benjamen, Hughes, Dunker and Wagner voting against the passage of the said order.

Mr. PIERSON: We object on the same ground as last stated. Do I understand you to offer that book in evidence?

387 Mr. HARDING: Yes.

Mr. PIERSON: Merely calling attention to these particular pages in addition?

Mr. HARDING: Yes. And I want now to offer generally everything in the report appearing on pages 179 of the appendix of the municipal report of 1895–'6, beginning as follows: "On November 18, 1895, the committee on health and police reported," and running from that through page 179, through pages 180, 181, 182, 183, 184, and on page 185 down to and closing with the words: "Following is a copy of the decision, filed March 17, 1896."

Mr. PIERSON: We shall make the same objections as were previously stated.

(Subject to the objections stated it is stipulated that the copy of the pages quoted from the report of the appendix of the municipal report of 1895–'6 may be inserted in the record as "Respondents' Exhibit No. 9.")

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Mr. Farquharson, it is recited on this page 185 of the appendix of the municipal reports of 1895–'6, that "on February 20, 1896, A. M. Skelly withdrew the check filed with his proposal, and on February 25, 1896, L. V. Merle withdrew his check." Do you know whether that correctly states the dates of those withdrawals or not?

A. I am not positive as to that.

888 X Q. 2. Will you tell me who made this material up for the municipal report?

A. Mr. Russell, the county clerk.

Examination-in-chief of L. R. ELLERT, a witness called on behalf of the respondents other than The California Reduction Company.

(By Mr. HARDING:)

Q. 1. You are president of the San Francisco Sanitary Reduction Works?

A. I am.

Q. 2. And do you give a good deal of your personal attention to the affairs of the concern?

A. A good deal of it, yes, sir.

Q. 3. In receiving garbage for cremation at the works how do you determine the amount to be paid by the scavenger for the incineration and cremation of garbage?

A. Well, when we first started, when the works first started in

operation, the wagons were measured by clerks at the gate, and the amount of garbage estimated and charged at the rate of 20 cents a cubic yard.

Q. 4. How were they measured by the clerks?

A. Well, they had yard-sticks at that time with which to measure. Since that time, however, we don't measure it, at least we calculate the amount of garbage in a cart because they know every cart that comes in. Sometimes they come in once a day and sometimes some of them come in three times a day. And we approximate it,
389 and if it was any difference of opinion in regard to it, we measure in boxes that we have at the works which have been measured by the city and county surveyor and certified to by him.

Q. 5. Now, these wagons, I presume you are aware have been measured by the city and county surveyor?

A. From what I have heard; I don't know personally.

Q. 6. I presume there is a scale on nearly all of these wagons?

A. Yes, I have seen a scale on these wagons.

Q. 7. Does the crematory take this measurement?

A. No, sir.

Q. 8. You say these clerks down there know about the cubic contents of the wagons there from familiarity with the wagons?

A. The wagons are about the same.

Q. 9. And is that knowledge on their part based upon any accurate mathematical measure of their contents?

A. Yes, for the reason that I estimate, as I have repeated many times before, because these people will compress in four or five or six cubic yards of garbage into two or three yards of space.

Q. 10. They will compress in how many?

A. A large quantity.

Q. 11. They will compress in five or six yards of garbage in two or three?

A. Yes, into two or three cubic yards. In other words, they will compress about one-third more into it than what their wagons are measured for.

Q. 12. And is that the basis upon which you charge them
390 when they drive up there, that they have got about one-third more in their wagons than——

A. (Interrupting.) Well, not all of them. Some of these men are all right, but the majority, yes. But then, if there is any dispute, why, of course, there are boxes on top of the works where they can measure. In other words, if a man is not satisfied and thinks he is being overcharged, then it is his privilege and his right to have his garbage measured in the cubic box that we have in the works. These boxes have been measured by the city and county surveyor.

Q. 13. If a man should drive up then with a wagon holding three cubic yards, and if he is one of the fellows that you suppose compress it into his wagon, then you will allow him for only two cubic yards?

A. Well, I don't want to answer the question in the way you have

asked it for the reason that you have stated "when a wagon holds three cubic yards" that we charge him for what he does not have; but if they compress three cubic yards into two cubic yards, I suppose then we will charge him for three cubic yards.

Q. 14. And then if a scavenger has the reputation of compressing his garbage, that would be the basis upon which you would charge, would it not?

A. Yes, as a general thing.

Q. 15. Now, if they demand a measurement, if they are dissatisfied with the charge that you are making and they demand a measurement of the garbage, how do you proceed with them then?

391 A. Well, in the first place they pay at the gate what we think is correct. Then they drive up to the top. We have men up there, sometimes two men, I believe, and his load is dumped into a box and leveled off, and if there has been a mistake made and he has been overcharged more than what the load measures, then he has a right to a rebate. If he has not been charged enough he then must pay what he has been undercharged.

Q. 16. It is dumped in the box loose, is it, or is it tamped down?

A. It is not tamped down. It is just as it naturally comes out of the wagon.

Q. 17. Then it is dumped from the platform right into the boxes?

A. It is dumped from the platform right into the boxes.

Q. 18. The boxes are below the level of the wagon?

A. Yes, below the level of the wagon.

Q. 19. So that all the compression the garbage gets is just from its fall from the wagon?

A. From its natural fall, yes.

Q. 20. And are all classes of garbage treated in the same way in that regard?

A. Yes, sir.

Q. 21. If a man came there with a wagon load of paper it would be the same as if it were wet offal from a hotel kitchen?

A. We have had no experience in that line, Mr. Harding.

392 We have not had any wagon loads of paper, so we never have had to measure it either in boxes or in wagons.

Q. 22. Well, suppose it would happen, what would you do then?

A. I never like to borrow trouble at all.

Mr. PIERSON: We object to that line of questioning as pure conjecture.

(By Mr. HARDING:)

Q. 23. Well, take house refuse for instance; you do get some paper in that, do you?

A. Oh, yes, some paper comes in.

Q. 24. For instance, excelsior, paper and rags.

A. Yes, sir.

Q. 25. But no matter what the character of it is, as you receive it there you treat it all alike?

A. As it has been received we treat it all alike.

Q. 26. It is dumped in and you level it off?

A. Of course, you must understand that is not all the time since we have been started, because we didn't put in the boxes until we had been in operation six or eight months.

Q. 27. But they have been in there for the last six or eight months or a year?

A. I think it has been going on a year now, if I am not mistaken.

Q. 28. And prior to that time, before having the boxes, you simply estimated it?

A. Oh, we had other boxes on a smaller scale, more crude. It took longer to handle it. We put these boxes in to expedite matters.

393 Q. 29. Is the crematory interested in the collection of garbage at all in this city?

A. Yes, sir.

Q. 30. In sending out wagons to collect garbage?

A. No, they are interested in what we call the auxiliary company.

Q. 31. They are interested in the auxiliary company?

A. Yes; that is, a good many of the stockholders of the Sanitary Reduction Works are stockholders in what we call the Sanitary Collecting Company.

Q. 32. Is that a corporation?

A. That is a corporation, sir.

Q. 33. The Sanitary Collecting Company?

A. That is the name, sir.

Q. 34. Who are the officers of that corporation?

(Objected to as incompetent, irrelevant and immaterial.)

A. C. A. Malm is president of it.

Q. 35. And the secretary?

(The same objection.)

A. The secretary is George B. Squires.

Q. 36. Can you mention the directors?

(The same objection.)

A. R. E. Miller is one, M. Newberger, and Squires and Malm and F. W. Cornyn.

Q. 37. Have you any superintendent of that company?

(The same objection.)

A. We have.

Q. 38. Who is the superintendent?

394 A. A gentleman by the name of Mr. Green, E. M. Green.

Q. 39. Does he hold any position with the Sanitary Reduction Works?

A. He does not.

Q. 40. Upon what terms does the Sanitary Collecting Company claim its garbage at the works of the Sanitary Reduction Company?

(Objected to as incompetent, irrelevant and immaterial.)

A. At twenty cents a cubic yard.

Q. 41. You charge them the same as you do the scavengers.

A. Exactly the same, sir. I would like to state, Mr. Harding, that I don't want Mr. Joost to annoy me when I am testifying. I want to object to that. In other words, I want to state that he is sitting in such a manner that I can see him, and I don't care about being annoyed by him. I can only give my testimony in the way I am asked. I don't want to be annoyed by Mr. Joost.

Q. 42. Now, does the Sanitary Reduction Works actually pay this money into the treasury of the Sanitary Reduction Works?

(The same objection.)

A. Yes, sir.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Doctor, you have spoken about these scavengers being in the habit of compressing or tamping their garbage in their
395 wagons. To what extent do you know of that?

A. Well, I suppose on an average of three-fourths or four-fifths of the wagons that come in there.

X Q. 2. To what extent do these wagons show that their loads have been compressed or tamped?

A. Well, the evidence of it is that it is very hard to handle them Sometimes you have to take shovels.

X Q. 3. Describe how hard it is.

A. Sometimes we have to take and dig it out to get it out at all.

X Q. 4. When the wagon is upturned does the load come out itself?

A. No, it does not come out itself.

X Q. 5. How is it gotten out?

A. They have to take shovels and forks and dig it out.

X Q. 6. Have you any personal knowledge of these scavengers doing that, tamping or compressing?

A. Yes, anyone can see them on the streets doing it.

X Q. 7. You have seen them yourself, have you?

A. Yes; many times.

X Q. 8. When did you first put in operation this system of having boxes for the purpose of making a fair measurement of this garbage?

A. Well, these particular boxes that I testified to were put in, I think, about a year ago, if I am not mistaken.

X Q. 9. Now, up to that time?

A. Up to that time we had a cart that would hold a cubic
396 yard, that we had measured. But it was a very crude way of handling it. It kept a man waiting too long to have it measured.

X Q. 10. The boxes that you have measured, how many of them are there?

A. I think there is about eighteen or twenty of them, if I am not mistaken.

X Q. 11. Eighteen or twenty measuring boxes?

A. Eighteen or twenty measuring boxes.

X Q. 12. Having a capacity of what?

A. They vary from two and a half up to seven or eight yards.

X Q. 13. Made purposely for this work, are they?

A. Yes, sir.

X Q. 14. And they are used to accommodate themselves to different loads, and they have been measured by the city and county surveyor?

A. They have been measured by the city and county surveyor.

X Q. 15. And certified by him?

A. Certified by him as being correct.

X Q. 16. What was the occasion of putting these boxes in there?

A. Well, in the first place, particularly for the reason to expedite the measuring of the loads there. And there were a great many disputes occurring all the time. I saw that it would not be possible to get along by having these small boxes, that it would take too long to get the wagons measured. And then we don't have to
397 handle the wagon now as we did before. It is to our interest to get the wagons unloaded as quick as possible.

X Q. 17. Have you ever witnessed the operation of measuring these yourself?

A. Yes, sir.

X Q. 18. How long does it take?

A. If a man comes there and handles his wagon as he properly should, I suppose he can get out there in from three to five minutes.

X Q. 19. Did you ever notice that it took half an hour to unload a wagon?

A. I have never seen it; I have never heard of it.

X Q. 20. Or twenty minutes long?

A. Never.

X Q. 21. Ten minutes long?

A. Not ten minutes; if they go right in and dump their loads they can get right out. In the first place about half of these men don't know how to drive a horse. They come up there and they don't know how to back their wagons. Then it takes them a longer time. But if they get in and know how to handle their wagons and unload their wagons, they can go in and dump into the boxes and measure and go out in five minutes.

X Q. 22. That has been your uniform experience there?

A. Yes, sir; I have stayed there to see them dump. I wanted to see how long it would take.

X Q. 23. Now you have testified that sometimes there have been
398 times when wagons have been measured and it would be found that you charged too much, and again, sometimes too little. Were there many instances of mistakes of that kind?

A. Yes, sir.

X Q. 24. Both ways?

A. Yes, I suppose it would be about an average both ways from what I can see.

X Q. 25. Now, how many of these scavengers on an average made any objection to the measurements that you made and wanted to have their loads measured? How many every day on an average?

A. Well, from the reports that come from the works I don't suppose there were over eight or ten a day out of the number that come there, probably two hundred loads a day on an average.

Redirect examination.

(By Mr. HARDING:)

R. Q. 1. How many wagons has this Sanitary Collecting Company?

(Objected to on the grounds stated upon direct examination on the same subject.)

A. About fifteen.

R. Q. 2. They are putting out more all the time?

A. Yes, they are putting them out all the time.

R. Q. 3. And this is the only corporation or concern in which the stockholders of the Sanitary Reduction Works are interested in any way?

A. I could not say that; I don't know anything about that.

R. Q. 4. So far as you know?

A. So far as I know of my own knowledge.

399 Examination of M. D. LEVENSON, a witness called on behalf of respondents other than The California Reduction Company.

(By Mr. HARDING:)

Q. 1. What business are you engaged in Mr. Levenson?

A. Well, I am engaged in gathering garbage and refuse.

Q. 2. You have a number of wagons, have you, engaged in that business?

A. Yes, sir.

Q. 3. And hire men to drive them?

A. Yes, sir.

Q. 4. And collect garbage?
A. Yes, sir.
Q. 5. How long have you been engaged in that business?
A. About eight years, I believe; between seven and eight.
Q. 6. And you continued to be so engaged at and subsequent to the time of the commencement of the operation of the Sanitary Reduction Works?
A. Yes, sir.
Q. 7. Did you at any time deliver garbage and refuse at the works of the Sanitary Reduction Works?
A. Yes, sir.
Q. 8. I hand you a letter dated March 1st, 1898. Can you identify that as a letter received by you?
A. Yes, that is a letter written to me by Mr. Ellert.

Mr. HARDING: We offer that in evidence.
(Objected to as irrelevant and immaterial.)
(Marked "Respondents' Exhibit No. 10.")

400 Mr. HARDING: The letter reads as follows: It is printed on the head of the Sanitary Reduction Works of San Francisco, Mills building. (Reads.)

"SAN FRANCISCO, CAL., March 1st, 1898.

M. D. Levenson, Esq., 120 Sutter St., city.

DEAR SIR: I enclose you herewith your bill to date, amounting to $173.50, a portion of which $28.25 is the balance of your account for January.

This bill I expect to have settled before Saturday, and in addition, I desire to notify you that commencing from Thursday, March 3rd, 1898, it will be necessary for you to furnish your drivers with sufficient funds to pay for each of your loads as they are delivered to the reduction works, as this company has decided that it will restrict itself to a cash business.

Yours truly,
(Signed) L. R. ELLERT."

Now I hand you a statement here and will ask you if you identify that as the bill referred to in that letter?
A. Yes, sir.

Mr. HARDING: I offer that in evidence as Respondents' Exhibit No. 11 which was formerly marked Exhibit No. 1.
(The same objection.)
(Marked "Respondents' Exhibit No. 11.")

401 Q. 9. Now, Mr. Levenson, referring to Exhibit No. 11, I notice this statement, "February 1st, incinerating one load, nine yards refuse, twenty cents." Have you any wagons or carts holding nine yards of refuse?

(Objected to as irrelevant and immaterial.)

A. No, sir.

Q. 10. Have you ever had your wagons measured by the surveyor to ascertain the cubic contents of them?

A. Yes, sir.

Q. 11. Have you got the results of that measurement?

A. I can get it, yes, sir. I gave it—I think Mr. Pierson took it away when the case came up in the attorney general's office.

Mr. PIERSON: It was returned to the attorney general.

The WITNESS: I can get a duplicate of it if it is required.

Mr. HARDING: I think you had better get both of them from the attorney general's office.

Further hearing adjourned to Friday, May 5, 1899, at 10:30 a. m.

FRIDAY, May 5th, 1898—10:30 a. m.

Counsel Appearing.

For complainants, Wm. M. Pierson, Esq.

For respondent, California Reduction Company, E. B. Leaming, Esq.

For respondents other than The California Reduction Company, R. T. Harding, Esq.

402 Examination-in-chief of PETER DENNER, a witness called on behalf of respondent California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. What is your full name?

A. Peter Denner.

Q. 2. Where do you live?

A. 28 Heron steeet.

Q. 3. In this city?

A. Yes, sir.

Q. 4. State whether you are the owner of the property where you reside.

A. I am.

Q. 5. Have you a family?

A. Yes, sir.

Q. 6. Who reside with you?

A. Yes, sir.

Q. 7. How long have you lived in that property where you now reside?

A. Since 1862.

Q. 8. Since 1862?

A. Yes, sir.

Q. 9. How long have you lived in that neigborhood?

A. Since 1859.

Q. 10. Do you know where the property of the Sanitary Reduction Works is, commonly called the crematory? I mean do you know where from your property?

A. Yes, sir.

Q. 11. How far are they away from your property?

A. Oh, say about five blocks.

Q. 12. About five blocks away in what direction?

A. I am on the east side.

Q. 13. Well, what winds would blow from the crematory over to your property? What direction would the wind blow that blew to your property?

A. South and southeast.

403 Q. 14. You may state whether or not you and your family at your property suffer any inconveniences that come from that crematory, and if so, what.

(Objected to as incompetent, irrelevant and immaterial.)

Q. 15. Do you understand the question?

A. Yes, sir.

Q. 16. All right, state to the court what they are, if any.

(The same objection.)

A. Well, when we get a south or a southeast wind we get the smoke from the crematory over. It is most in gloomy, heavy weather, and so we could not stand it in the house. We had to close the doors and windows.

Q. 17. Why can't you stand it?

(The same objection.)

A. Because it is a sickening smell.

Q. 18. A sickening smell? What else, if anything, annoys you there that comes from the crematory beside the smell?

(The same objection.)

A. Well, it isn't constantly, it is just when the wind comes from the south or southeast we get a kind of stuff in the atmosphere, it comes down just like snow, but I picked it up and investigated it; I wanted to see what it contains. Well, it looked to me just like burned paper when I had it between my fingers, it was just like flour, and my porch was thick with it and so the whole neighborhood.

404 Q. 19. Do you know whether it came out from the crematory?

(The same objection.)

A. It could not come from any other place.

Q. 20. State how many times within a single week you have had this deposit upon your porch of the thickness that you have named? How many times within a single week?

(The same objection.)

A. Well, it was about five weeks ago, three times in succession.

Q. 21. Three successive times?

A. It was there Monday until Wednesday; Monday was the worst.

Q. 22. State whether or not you are annoyed by the smoke in the daytime, and the stink in the daytime, or in the night-time or both.

(The same objection. Also objected to as leading.)

A. Well, in the night, just after we get that wind; if the west wind blows then it won't annoy us; it is only when it comes from the south or southeast, because the west wind blows it in the other direction.

Q. 23. What effect would this deposit of cinders and soot that you have described have upon any washing that should be hanging on the line, to clothes hanging out if any?

(The same objection; also that it is leading and suggestive.)

A. Well, because when the washing is put out and the stuff
405 comes over it hangs to the clothes, and the work has to be done over again.

Q. 24. You may state whether or not the stench that you have referred to and the deposit of cinders that you have described interferes with the enjoyment of your property where you live?

(The same objection.)

Q. 25. State whether or not it does interfere.

(The same objection.)

A. It does.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. You are father to Peter J. Denner, are you not?

A. Yes, sir.

X Q. 2. Who has been a witness in this case?

A. Yes, sir.

X Q. 3. Have you and he talked over your testimony is this case?

A. I didn't speak to him about the testimony what he gave. I knew he was here; that is all.

X Q. 4. Did you talk to him about what your testimony was to be this morning?

A. No, sir.

X Q. 5. Have you been talking about your testimony, Mr. Denner?

A. I didn't talk to anybody.

X Q. 6. You have not told anybody then what your testimony is to be in this case?

A. No, sir.

X Q. 7. You were subpœnaed here as a witness?

A. I was sent as a witness.

406 X Q. 8. You have had a paper served upon you to appear as a witness, have you?

A. No, sir.

X Q. 9. Then you were not subpœnaed as a witness?

A. I am told to come here.

X Q. 10. Who told you to come?

A. That is Mr. Vetter.

X Q. 11. That is Mr. August Vetter, isn't it?

A. Yes, sir.

X Q. 12. Is Mr. August Vetter taking considerable interest in this case?

A. That is more than I know.

X Q. 13. He has been getting up witnesses for the defendants in this case?

A. He was to my house and told me I should come.

X Q. 14. Did he tell you that he had asked others to come too?

A. He said he had asked others to come.

X Q. 15. Then you are not here in obedience to any subpœna or any papers that have been served upon you?

A. Not a subpœna.

X Q. 16. Have you had any fees paid you for coming?

A. Not as I know anything about fees.

X Q. 17. You have not had any money paid you for coming here?

A. No, sir; not a dime.

X Q. 18. Has any money been promised you?

A. No, sir.

X Q. 19. Did you tell Mr. Vetter what you could testify to, what your evidence would be?

A. He only told me to come here as a witness.

407 X Q. 20. You have not told anybody what you would testify to?

A. I didn't speak to him about it.

X Q. 21. And you didn't tell anybody else what you testify to?

A. I didn't tell anybody else because I didn't know what questions would be given to me and the answers that I should make, I could not tell beforehand.

X Q. 22. Exactly, I understand that. Have you ever made any affidavits in Mr. Vetter's case?

A. No, sir.

X Q. 23. You didn't make any affidavits for him in his case?

A. I don't know what you mean by that.

X Q. 24. You know there is a suit pending against the Sanitary Reduction Works in the superior court?

A. He was talking something about it, and says his case comes up after this.

X Q. 25. And didn't you make an affidavit for him in that case?

A. Not as I know.

X Q. 26. Didn't you swear to a paper for him?

A. No, sir.

X Q. 27. Didn't you swear to any paper in this case, to any affidavit?

A. No, sir.

X Q. 28. And you are quite sure you didn't talk to anybody at all?

A. I didn't talk to anybody else because I didn't know what to say.

408 X Q. 29. In what direction is your house and property from the Sanitary Reduction Works.

A. It is south southeast.

X Q. 30. Your house is southeast?

A. Northeast; that way. (Showing.)

X Q. 31. Your house is northeast from the Sanitary Reduction Works?

A. Yes, sir.

X Q. 32. Now when in the summer time, Mr. Denner, when you have trade winds, west winds, are you annoyed by this?

A. Not at all.

X Q. 33. It is only when the wind is south southeast?

A. It is only when the wind is south southeast.

X Q. 34. Then you have this smell and you have this half burned paper, eh?

A. Yes, that is the stuff what comes down.

X Q. 35. And you say that a little while ago you had three days in succession?

A. That was first about five weeks ago.

X Q. 36. How long did it last each time?

A. Well, it lasted until about—until ten of half past ten.

X Q. 37. In the morning, eh?

A. In the morning.

X Q. 38. Can you give us those days, what days it was? Was it Monday?

A. No, sir, I can't; I know it was about that long, about five weeks ago; I think it was on Monday.

X Q. 39. Is there nothing by which you can refresh your memory as to what day of the month it was?

409 A. No, I can't state that.

X Q. 40. It was in April was it, you think?

A. No, sir, it was the latter part of March because I recollect because it was washing day; it was on a Monday when the worst came down.

X Q. 41. Yes, that is usually washing day.

Redirect examination.

(By Mr. HARDING:)

R. Q. 1. Mr. Denner, you talked over this case with me before you went on the witness stand this morning?

(Objected to as leading.)

R. Q. 2. Did you or not?
A. Yes, what you asked me.

Examination-in-chief of Mrs. MARY WOHLKEN, a witness called on behalf of the respondent California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. Are you a married woman, Mrs. Wohlken?
A. Yes, sir.
Q. 2. Where do you reside?
A. Ninth and Brannan.
Q. 3. What number?
A. 548 Ninth.
Q. 4. Do you reside there with your husband?
A. Yes, sir.
Q. 5. And children?
A. Yes, sir.
Q. 6. How many children have you?
A. I have nine altogether.
410 Q. 7. How many reside with you?
A. Five.
Q. 8. How long have you resided there, Mrs. Wohlken?
A. Pretty near ten years.
Q. 9. How far away is that property wher- you reside from the smokestack of the Sanitary Reduction Works?
A. I can tell you just about three blocks, about two or three blocks.
Q. 11. Two or three blocks?
A. Yes, sir.
Q. 11. State whether or not you suffer any inconvenience where you reside by reason of the Sanitary Reduction Works, if so, what?

(Objected to as irrelevant and immaterial.)

A. When it is rainy weather, then it is very bad.
Q. 12. Is it in winter time when the rainy weather comes in that it is bad?
A. It is bad. It is a bad time then.
Q. 13. It is a bad time then?
A. Yes; we have to shut the windows and doors; we can't stand the smell, you know.
Q. 14. What is that you say?
A. We have to shut the windows and doors.
Q. 15. Why do you have to shut the windows and doors?
A. It smells so bad.
Q. 16. What kind of a smell is it?

(The same objection.)

A. I don't know; sometimes it smells that way and sometimes it smells all the time.

Q. 17. I mean is it a bad smell, or a nice smell?

(The same objection.)

411 A. It is a bad smell.

Q. 18. How strong a smell is it?

(The same objection.)

A. We can't stand it, you know. You can't breath- when you are outside.

Q. 19. You can't breath- when you are outside?

(The same objection.)

A. Yes, sir.

Q. 20. You mean by that that it suffocates?

(The same objection.)

A. Yes; it gets right in the throat.

Q. 21. Do you have that smell all the time or only part of the time?

(The same objection.)

A. Part of the time; when the rainy weather comes in the winter time, and when the wind comes from there.

Q. 22. When the wind comes from there?

A. Yes, sir.

Q. 23. Do you know whether this smell has any effect upon your children?

(The same objection.)

A. Yes, sir. My big girl is sick since all the time. Doctor say- it comes from the crematory.

Mr. PIERSON: We object to that answer as hearsay, and move to strike it out.

The WITNESS (continuing): Boy is sick too, and doctor say- it comes from same. Last sum-er time I had a girl eleven or twelve years old was all summer sick.

412 Mr. PIERSON: I move to strike that out on the same grounds, and as not responsive, irrelevant and immaterial.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. What countrywoman are you? What nationality are you?

A. German.

X Q. 2. How long have you lived at 548 9th street?

A. Ten years all the time; pretty near ten years.
X Q. 3. Is your husband there?
A. Yes, my husband is there.
— Q. 4. What is his business?
A. He has a saloon.
— Q. 5. How long has he kept saloon there?
A. Since that ten years.
X Q. 6. You live in the same building where the saloon is kept?
A. Yes, sir.
X Q. 7. Is that a one-story building?
A. Yes, sir, it is a one-story building.
X Q. 8. Then you live back of the saloon?
A. Yes, sir. There is a place back.
X Q. 9. Do you understand English pretty well?
A. Oh, yes, not all.
X Q. 10. Pretty well, though?
A. Yes, sir.
X Q. 11. How came you to come here this morning?
A. Mr. Vetter told me to yesterday if I would please come up here and tell the truth for the crematory.
X Q. 12. Who told you?
A. Mr. Vetter.
X Q. 13. That is Mr. August Vetter, isn't it?
413 A. Yes, sir.
X Q. 14. He is the man who has a suit against the Sanitary Reduction Works?
A. I don't know; he told me to come up here and tell the truth against the crematory.
X Q. 15. Do you know whether he has been to other people to get them to come here?
A. I don't know about it; he told my husband to please come up this morning.
X Q. 16. He wanted your husband and you both to come?
A. Yes, sir.
X Q. 17. Did your husband come with you?
A. No, sir.
X Q. 18. Your husband is in town, is he?
A. He is in the city, yes. He is in the house.
X Q. 19. What did Mr. Vetter tell you to do when you came here?
A. He didn't speak to me at all. I don't know anything about it at all; he only said if I would please and come up here and tell the truth about the crematory.
X Q. 22. He told your husband to tell you to come up here and tell the truth about the crematory?
A. Yes, sir.
X Q. 23. Do I understand from that that he was afraid you would not tell the truth?
A. Yes, I wasn't afraid to tell; I don't know what you say.

X Q. 24. Your husband told you that Mr. Vetter told him
414 that you were to come here and tell the truth about the crematory?

A. Yes, sir.

X Q. 25. Now, did you understand that Mr. Vetter was afraid you would not tell the truth about the crematory?

A. I don't know; I didn't speak to Vetter at all.

X Q. 26. Are you not friendly with him?

A. Oh, I am friendly with him, but I didn't see him. He didn't speak to me.

X Q. 27. Were you asked to be a witness for Mr. Vetter in his case? You know he has a suit against the crematory. Were you asked to be a witness in his case?

A. I was not.

X Q. 28. Did you ever sign or swear to any affidavit in this case?

A. No.

X Q. 29. Or in this case?

A. No, nobody asked me to.

X Q. 30. Or in this case?

A. No.

X Q. 31. You are sure about that?

A. Yes; nobody asked me anything at all since yesterday my husband told me.

X Q. 32. Which way are the Sanitary Reduction Works from your house?

A. I can't tell you, only it is 9th and Brannan that I live.

X Q. 33. Which direction, which way from your house? Your house is at the corner of 9th and Brannan?

A. Yes, sir.

X Q. 34. Which way from your house is the Sanitary Re-
415 duction Works? You may not know the points of the compass? I don't want to catch you.

A. As you come down Brannan street, 9th lays almost——

X Q. 35. (Interrupting.) Just wait a moment now. As you come down. As you come down 9th toward Mission, which way is the Sanitary Reduction Works, on the left hand or on the right hand?

A. It is this way. (Showing.)

X Q. 36. The reporter can't tell what that way means. State on your right hand or on your left.

A. On the right hand.

X Q. 37. As you go out Brannan?

A. Yes, sir.

X Q. 38. On your right hand?

A. Yes, on the right hand, that way. (Showing.) Yes, sir.

X Q. 39. Now, you say that in the winter time the wind comes from that direction?

A. Yes, sir.

X Q. 40. Very often?

A. Yes, sir.

X Q. 41. How often?
A. When the weather changes sometimes.
X Q. 42. Do you mean whenever it rains? Is that it, when it rains?
A. Yes, sir.
X Q. 43. Whenever it rains then this smoke comes from this way?
A. Yes, sir.
X Q. 44. Does it affect you at any other time than that?
A. No, not so often.
X Q. 45. Does it ever come at any other time?
416 A. I could not tell. That I don't mind so much. I know when it rains it is bad.
X Q. 46. Who was the doctor that you say attended your big girl?
A. The big girl? I can't tell you the name. She was at Hayes and Buchanan there; I don't know his name.
X Q. 48. You don't know what the doctor's name is that lived at the corner of Hayes and Buchanan?
A. No. I had one daughter living there and she stayed there with her that time.
X Q. 49. You don't know the doctor's name?
A. No.
X Q. 50. Where did the doctor live? Do you know?
A. I can't tell you. I didn't mind it so much, you know.
X Q. 51. How long ago was it that the doctor attended her?
A. About two months.
X Q. 52. About two months ago? Did he send a bill for his services?
A. No, not yet.
X Q. 53. Can you give us some idea what his name is, where he lives and where his office is?
A. I forget all about it.

Examination-in-chief of FRANK KOSMALSKI, a witness called on behalf of respondent, California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. Where do you reside?
A. 4 McLea court.
417 Q. 2. Do you own the premises where you reside?
A. Yes, sir.
Q. 3. Are you a married man?
A. Yes, sir.
Q. 4. Does your wife live there with you?
A. Yes, sir.
Q. 5. How long have you lived there?
A. About twenty-two years.
Q. 6. How far is your property from the smokestack of the Sanitary Reduction Works?

A. It is about three or four blocks.

Q. 7. What direction is your property from the Sanitary Reduction Works?

A. My property?

Q. 8. What wind blows on your property from the Sanitary Reduction Works?

A. South southeast.

Q. 9. State whether you suffer any inconvenience at your property by reason of the location of the Sanitary Reduction Works; if so, what?

(Objected to as irrelevant and immaterial.)

A. Well, we suffer a good deal of damage to the property because it is hard to sell on account of the smoke and smell, the smoke smells bad.

Q. 10. State whether or not you suffer any personal inconvenience aside from any damages to the property?

(The same objection.)

A. Yes, I do, because in case of my going to the yard to do something I can't almost breathe from the smell—choking.

Q. 11. Does that happen often?

(The same objection.)

418 A. Yes, but worse always when the wind blows south southeast, and most of the time it is the worst when the weather is calm, no wind at all. It is the worst then. It covers the whole ground.

Q. 12. Covers the ground with what?

(The same objection.)

A. With dust, white dust, small pieces of paper just as big as a fifty-cent piece, as big as that comes down.

Q. 13. State whether or not the conditions that you have described as coming from the Sanitary Reduction Works interfere with the quiet enjoyment of your property?

(The same objection.)

A. Yes, they do; as, for instance, Mr. Denner stated that it destroyed the clothes, when my wife is washing the white clothes.

Mr. PIERSON: We move to strike out the last part of the answer as being hearsay.

Q. 14. Where is McLea court?

A. A small court between 8th and 9th, Harrison and Bryant.

(By Mr. LEANING:)

Q. 15. Did you ever work in the Sanitary Reduction Works?

A. I did, sir.

Q. 16. When?

A. Last week, a week ago to-day.
Q. 17. How long did you work there?
A. I worked two days and a half last week.
Q. 18. Why did you leave?

(Objected to as irrelevant and immaterial.)

A. I was laid off. They didn't need me any more.
419 Q. 19. Was that the only reason?
A. That was the reason, yes.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. McLea court is between 8th and 9th, Harrison and Bryant?
A. Yes, sir.
X Q. 2. Now how far is that from the smokestack of the Sanitary Reduction Works?
A. Between three and four blocks. I can't tell exactly.
X Q. 3. Now, blocks are of all lengths? How many feet is it, about?
A. I could not tell you how many feet.
X Q. 4. You know how long a block is there, don't you?
A. Not very well.
X Q. 5. You know how long the block is between 8th and 9th?
A. No, sir.
X Q. 6. You know whether it is 100 or 700 feet?
A. It is over 200 feet.
X Q. 7. Isn't it over 800 feet?
A. I could not tell you.
X Q. 8. Do you know how long the block is between Harrison and Bryant?
A. No, sir.
X Q. 9. Do you know whether it is 100 or 500 feet?
A. It is more than 100; whether it is more than 500 I could not say.
X Q. 10. What is your business?
A. I am doing street work at present for a contractor.
420 X Q. 11. You are a contractor for street work?
A. For the contractor. I do street work, sewer work.
X Q. 12. How long have you been in that business?
A. Oh, I have been several times, for that matter.
X Q. 13. Is that your regular business?
A. No, I was cleaning streets for the last three years, but I was home sick for a while, and got out of it and have to get what I can get.
X Q. 14. You were street sweeping for how long, three years?
A. Yes, sir.

X Q. 15. Up to what time, how long ago?
A. About three months ago.
X Q. 16. Why did you stop that?
A. I was sick and have to stop home and I can't get in now. I have to wait until my turn comes.
X Q. 17. This property where you live, do you own that?
A. Yes, sir.
X Q. 18. How large a lot is that?
A. Twenty-three by seventy-five.
X Q. 19. You say you desire to sell the property over there?
A. Yes, sir.
X Q. 20. Did you offer this lot for sale?
A. I did have it for sale some years ago, but I keep it myself now.
X Q. 21. How long ago did you offer it for sale?
A. About nine years ago.
X Q. 22. You concluded you didn't want to sell it now?
421 A. No, I just keep it. Property is too low. I could not sell it.
X Q. 23. And now does this smoke that you speak of trouble you at any other time than when the wind is from the south southeast?
A. Not when the wind blows in the way it is in summer, except when the wind blows south southeast, and when the air is heavy it is worst.
X Q. 24. Now, when the wind in summer time comes from the south southwest, does it affect you too?
A. No, it does not affect me when the wind comes from the south southwest.
X Q. 25. It is only when the wind blows from the south southeast?
A. It is only when the wind blows from the south southeast.
X Q. 26. Now, where you live on McLea court it is not very high ground there, is it?
A. No, sir, it is level ground.
X Q. 27. It is near the water, isn't it?
A. No, it is about two blocks from where the creek used to run.
X Q. 28. It is not more than 100 feet above the water, is it, there?
A. Oh, no, no.
X Q. 29. It is quite flat?
A. Quite flat.
X Q. 30. Now, when the wind blows strong from the south southeast, that is, when it is stormy?
A. That is the worst. That draws right down the smoke.
422 X Q. Then it comes right down?
A. Then it comes right down.
X Q. 32. And that is the time that these pieces of charred paper come down?
A. No, it is when the air is calm and no wind at all.
X Q. 33. When the wind is calm?

A. When it is calm, then the paper comes down, yes, sir.

X Q. 34. How did you happen to come here this morning, Mr. Kosmalski?

A. Well, Mr. Vetter made me.

X Q. 35. Is that Mr. August Vetter?

A. Yes, sir.

X Q. 36. He is the one who has a suit against the Sanitary Reduction Works, isn't he?

A. Yes, sir.

X Q. 37. Were you subpœnaed to come here, did you have a subpœna served upon you?

A. No, he told me if I wanted to do him a kind of a favor to come over. He is a neighbor of mine.

X Q. 38. Did he pay you your regular witness fees?

A. No, sir.

X Q. 39. He didn't promise to pay you your witness fees?

A. Yes, sir. He didn't promise; he told me I would get paid for it.

X Q. 40. That is, you would get paid by the defendants of this suit?

A. I don't know who should pay it.

423 X Q. 41. How much did he say you would get?

A. One dollar and a half.

X Q. 42. Well, now, what did he say to you when he asked you to come here?

A. Nothing at all. He told me to come over and testify.

X Q. 43. And you didn't tell him what you were going to swear to?

A. No, sir.

X Q. 44. He didn't ask you?

A. No, sir.

X Q. 45. Did anybody else ask you?

A. No, sir.

X Q. 46. Did you tell anybody what you were going to swear to?

A. No, sir, I didn't tell nobody except my wife. I didn't see nobody since I seen him.

X Q. 47. How did Mr. Vetter know that you knew anything about this?

A. Well, he lived there. He knew where I lived.

X Q. 48. He knew that you lived there?

A. Yes, sir.

X Q. 49. Are you sure that you have not told anybody what you were going to swear to?

A. No, sir; no, sir.

X Q. 50. Are you really sure about that? Nobody at all?

A. No, nobody, except my wife.

X Q. 51. Is she here this morning?

A. No, sir.

X Q. 52. When were you laid off from the Sanitary Reduction Works? Last week you did work for them, did you?

424 A. No, sir, I had work two days and a half last week for—what's his name? That drives these wagons, I forget his name.

X Q. 53. How long did you work for the Sanitary Reduction Works?

A. One day, that is a week ago last Thursday, I worked for the Sanitary Reduction Works. I got nothing for it, shoveling on dirty, stinking fish that is rotten. I don't see why they could not smell enough to spoil all the neighborhood.

X Q. 54. It must have been very tough.

A. It was tough and I was working one day and I got enough of it.

X Q. 55. You worked for who?

A. I don't know who.

X Q. 56. You were employed by whom?

A. I don't know the man's name.

X Q. 57. Did you go to him for work?

A. I asked for work. They put me on. I got drove all around, all over.

X Q. 58. You were laid off by the same person who employed you?

A. Yes; the next morning I came to work and there was nothing for me to do I stayed there again for work.

X Q. 59. Is that the first time you applied for work?

A. I went there several times in the morning, went to get

425 work. I said I would have to take whatever I could get.

Examination-in-chief of JOSEPH ANDRES, a witness called on behalf of respondent California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. Where do you reside, Mr. Andres?

A. I live up on Rose avenue and Laguna street.

Q. 2. Are you a property owner in the vicinity of the Sanitary Reduction Works?

A. Yes, I own quite a piece of property right down there close to it, or close enough to get all the stuff I want.

(Objected to as not responsive to the question.)

Q. 3. Did you answer that part of my question which was whether you owned property near the crematory?

A. I own property on the corner of 8th and Minna.

Q. 4. How far is that property from the smokestack of the Sanitary Reduction Works?

A. I guess it must be a good half mile.

Q. 5. Do you own any other property in that neighborhood?

A. No, sir.

Q. 6. Do you own any other property in this city?

A. Yes, I own property in the Mission.

Q. 7. Do you own the property where you live on Laguna street?

A. Yes, sir.

Q. 8. How much property in value do you own at 8th and Minna?

426 A. The property cost me $45,000, that is the lot and the building.

Q. 9. Are you down there at 8th and Minna where your property is in the vicinity of the crematory very often?

A. Oh, yes; since I am able I take quite an interest in that street down there. We want to get the street through to South San Francisco so that brings me out around in that neighborhood very often.

Q. 10. How long have you owned that property at 8th and Minna?

A. Fifteen years.

Q. 11. How often are you down there in the vicinity of the crematory?

A. Well, I have been there whenever I am able for the last two years. For three years I have been trying to get the street through to South San Francisco, and we make it our business to be down there very often to look at the locality where the street runs through, where it will stretch over to the other side of the crematory works.

Q. 12. Then you spend a great portion of your time down there?

A. Yes, my property on 8th street, I have often been down there. I go down there very often, go down past the crematory.

Q. 13. Are you able to state whether there are any stenches or smells that come from the crematory of the Sanitary Reduction Works?

(Objected to as irrelevant and immaterial.)

427 A. Yes, they are bad enough. I am very lucky that we don't get any more up there than we do. When the wind blows from the south along there we get all we want along there. It stinks. It is about the meanest stink—there is no name to it. It stinks inside of my house right up there. I have got a light—well there through the whole house and when the front door is open and when the wind comes over there it stinks the house. It won't do for a landlord to let the tenants know where it comes from. All over there, around there, property owners are afraid to talk about it because they are afraid they get their houses empty. I have several of them. That was over a year ago. Then I got hurt or I would have made complaint of it on my own hook. I spoke to one of the doctors there and he told me, "Well," he says, "that stench, that smoke, has come to stay," and he gave me advice to sell my property.

Mr. PIERSON: We move to strike out the answer of the witness as hearsay and irrelevant and immaterial.

The WITNESS (continuing): There is papers falling out of that chimney, some pieces about half the size of a newspaper. It appears

that they don't burn all the stuff and they smoke, where it ever strikes, where it strikes it will knock a person down. It does me. It is the most, the biggest stink in the city of San Francisco.

428 Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Let us see if we can locate this lot now, the corner of 8th and Minna. It is the next street to Mission? It is between Mission and Howard streets?

A. Yes, sir.

X Q. 2. How large is that lot, Mr. Andres?

A. Eighty by eighty.

X Q. 3. And it cost you $45,000?

A. The lot and the house did, yes, sir.

X Q. 4. How long ago, fifteen years?

A. Yes, I guess the house stands about fifteen years.

X Q. 5. Along about that time it cost you $45,000, fifteen years ago? Did you pay that for it?

A. I paid for the lot $16,000 and then for the building, it is a good, nice big three-story house building, the building cost me the rest.

X Q. 6. You paid $16,000 for the lot and the rest for the building?

A. Yes, sir.

X Q. 7. How much of a building have you there?

A. I built on the whole lot, eighty feet front and eighty feet down.

X Q. 8. How many stories.

A. Three and a basement. I have been assessed $28,000. I got it now down because that hurts the property around there considerable and the mud wagons go through that street and some of them leave some stuff that falls off the wagon and falls down in the sewer down there.

429 X Q. 9. These scavenger wagons?

A. Yes, yes.

X Q. 10. Sometimes they are not covered and this garbage scatters over the street and places around?

A. Yes, some soot and some lighter stuff.

X Q. 11. Now, do you know in what direction the Sanitary Reduction Works is from your property?

A. It is about south from me.

X Q. 12. It is about southeast?

A. Well, not quite.

X Q. 13. Is it east of south or west of south?

A. I think it is mostly rather a little from the southwest.

X Q. 14. Well, now, you think it is fully half a mile, do you?

A. I think so; I could not say; it is about ten blocks there. Some of them are pretty long and it is about I think in the neighborhood of six blocks from my place.

X Q. 15. Those blocks there running down the street are 550 feet front are they?

A. I think they are 100-vara lots. I think it must be six blocks down there.

X Q. 16. It would be 3300 feet outside of the streets. It is probably more than half a mile.

A. Well, I give a rough estimate.

X Q. 17. Now when you speak of these papers coming down, these papers that are not burned, do you mean that they come down on your property on the corner of Eighth and Minna?

430 A. No, not so far. I only say I have seen them fall down there in the neighborhood.

X Q. 18. When you were near the works?

A. Yes, when I go down there they fall and the wind carries them off pretty well.

X Q. 19. Does it go anywheres up near your property? As far as that?

A. No, no, we only smell the stench. Wherever that smoke goes, when the wind blows right, you see my place lies a good deal higher than that and the smoke sometimes drops on the top of the house there. It comes into my light-well. The first time I noticed it I didn't know what it was. I went in the house and I didn't know where that smell came from. I could not make out where it came from.

X Q. 20. Now, how often did that happen? I mean up where your property is?

A. Well, it don't happen so very often there because we don't get the wind from there often, but it is bad enough when it comes.

X Q. 21. Of course in the summer time the wind blows off the other way.

A. In the summer time is when we get it worst, when it is a little calm weather, then the wind comes from the crematory.

X Q. 22. In the summer time?

A. In the summer time, yes, in the summer time.

X Q. 23. You get the south wind in the summer time?

431 A. Yes, we do; and southeast or somewhere around in that neighborhood. Oh, yes, we get it. It comes right up there.

X Q. 24. Now such a wind as we have it to-day does the smoke come over there?

A. I have not noticed the wind, what direction it comes from to-day. I say it don't come up there so very often.

X Q. 25. Isn't it mostly in winter time that you have this trouble?

A. No, it is in summer time too.

X Q. 26. In summer time?

A. In summer time when we get the south wind and that brings it up, brings the stench up this way. I think one time the smell came up in my house clear to Laguna street. In the water-closet there I had the window open, you know, and I smelled it. It came up there; it comes up quite a distance.

X Q. 27. Don't you think that that was all the smell of the water-closet and not of the smokestack?

A. Oh, I know the smell.

X Q. 28. Do you all the smells that come from a water-closet too?

A. Well, the water-closet, I don't know. We have got pretty good sewerage up there. My water-closet don't smell.

X Q. 29. Tell me how is your house down there at 8th and Minna occupied—is it occupied by stores?

A. I have got stores and I have got six flats there.

432 X Q. 30. Then the upper part is of flats?

A. Yes, a good many people live there in that house.

X Q. 31. Is it occupied pretty well, filled up? You keep it well rented?

A. Well, I rent it, of course it gets empty sometimes, gets empty.

X Q. 32. As a rule does it keep pretty well filled up?

A. Oh, yes, I rent it tolerably fair; yes.

X Q. 33. How long have you lived here, Mr. Andres?

A. In the city?

X Q. 34. Yes.

A. Sixteen years.

X Q. 35. Where did you come from here?

A. I came from Forest Hill, Placer county, the last time I moved. I am in California forty-three years.

Examination-in-chief of DIANA CHATHAM, a witness called on behalf of respondent, California Reduction Company, sworn:

(By Mr. LEAMING:)

Q. 1. What is your full name?

A. Diana Chatham.

Q. 2. Where do you reside?

A. The corner of Mariposa and Carolina streets.

Q. 3. On the corner? What number? Has the house got a number?

A. 1621.

Q. 4. What street?

A. Mariposa, corner of Carolina.

Q. 5. How long have you lived there?

A. I have been there since 1885.

433 Q. 6. Who owns the property where you live?

A. I do.

Q. 7. Are you a widow?

A. Yes, sir.

Q. 8. Have you a family of children that reside with you?

A. There is none of them with me now.

Q. 9. Grown up are they?

A. Yes, sir.

Q. 10. You stay alone then at this time?

A. Except a little niece of mine that is at the house, a small child six years old.

Q. 11. How far away is your property from the smokestack of the Sanitary Reduction Works?

A. About two blocks.

Q. 12. In which direction is the smokestack of the crematory from your property?

A. Northwest.

Q. 13. Were you here when the last witness testified?

A. I have not been here before.

Q. 14. You did not hear the testimony of the last witness?

—. Oh, yes, I heard three witnesses.

Q. 15. Then your property is on the opposite side of the crematory from the property of Mr. Andres, is it, the last witness that testified?

A. Oh, yes, he is over on Brannan street.

Q. 16. And you are on the opposite side?

A. We are the other way. We are on the south from them, on the southeast from Brannan street.

Q. 17. So that a wind blowing from the crematory over this property would be a wind from the east direction?

A. Northeast.

434 Q. 18. Northeast?

A. No, northwest.

Q. 19. State whether or not at your property you suffer any inconveniences that come from the smokestack of the crematory?

(Objected to as irrelevant and immaterial.)

Q. 20. What inconveniences are they?

(The same objection.)

A. Well, it is very difficult for me to breathe some days when the air is heavy and that smoke lies down on you.

Q. 21. How is it difficult to breathe?

(The same objection.)

A. It seems as though there is something cuts your throat and cuts into your lungs. I don't know what it is. It must be something that they are burning those days.

Q. 22. Is there any smell with it?

A. Oh, yes, certainly.

Q. 23. It is the smell that you refer to?

A. There is a smell something like bad meat burning.

Q. 24. Is it very offensive?

(Objected to as leading.)

Q. 25. State whether or not it is very offensive.

(The same objection. Also objected to as irrelevant and immaterial.)

A. Yes, it is very offensive, so bad that I go in the house when I am out of doors when it comes.

435 Q. 26. How often are you annoyed with it where you live?

(The same objection.)

A. Nearly every day.

Q. 27. Nearly every day?

A. Yes, all this heavy weather, when the weather is heavy; when the air is light and sunshiny it is not so bad.

Q. 28. Are you able to state whether the inconveniences that you suffer there, this stench, injures you or not?

(The same objection.)

A. I think it does.

Q. 29. How does it affect you?

A. Well, it affects my lungs; they feel sore. I have got one of them bad spells now. Yesterday was heavy weather and I can hardly talk to-day. I am not generally this way, not all the time.

Q. 30. I think you made an affidavit for Mr. Vetter in the suit that he brought against the crematory, didn't you?

(The same objection.)

A. I didn't make an affidavit for Mr. Vetter. He came to our house and we were talking over these things. He used to be my blacksmith and I knew him.

Q. 31. I beg your pardon, I think you did sign an affidavit in this case or in some case.

A. Well, it was an affidavit of my own or intended to be; I don't know how——

436 Q. 32. (Interrupting.) That is what I mean. You signed an affidavit?

A. Yes, certainly, certainly. I went to a lawyer.

Q. 33. That affidavit was used for Mr. Vetter?

A. It was in the Mills building that I went to this lawyer. I was looking for you since and I could not find you.

Q. 34. Will you state to the court, please, what you have noticed with reference to raising flowers at your place?

A. I can't raise a perfect rose on the place since that crematory went there.

Q. 35. Could you before the crematory went there?

A. Oh, yes, I had beautiful roses. I have not taken so much pains with them since.

Q. 36. Since that time you have found it impossible to raise a perfect rose?

A. Yes, on the outside.

Q. 37. They will all be blighted?

A. Yes, sir.

Q. 38. What do you attribute that to?

A. I attribute it to the crematory; I don't see anything else to attribute it to.

Q. 39. You believe it to be for that reason?

A. Yes. After I made that affidavit there, more than a hundred came to me and said they would make an affidavit if they would send for them.

Q. 40. More than a hundred?

A. Yes, neighbors around there.

437 Mr. PIERSON: I move to strike that out as hearsay.

(By Mr. LEAMING:)

Q. 41. Who asked you to come here this morning?

A. I don't know; there was a gentleman came to the house. I never saw him before; he said the case was coming on now and if I wanted to come this would be the last time. I came of my own accord. Further than that I don't know anything about it. If anything could be done to stop that smoke, I thought it was necessary to do it.

Q. 42. You are anxious for the smoke to stop, that is why you came?

A. Yes, sir. My property lies there. I have two blocks and about all I have lies there; I could not hardly give it away. My little houses that I have got I could not rent them half the time. People don't know there what is the cause of it. So, of course I could not say nothing about it. They would only send me word that they would hunt another place.

Q. 43. Did I ask you whether any burned paper would fall?

A. No, you did not.

Q. 44. State what the fact is.

(The same objection.)

A. They do. They do burned paper fall.

Q. 45. Paper does fall?

A. It falls there bad; it falls as big as your hand.

Q. 46. At this time does it fall when there isn't so much wind?

438 A. I don't know as it does; the soot falls on the porch.

Q. 47. But not so much paper is there?

A. No.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. Are there any houses there, Mrs. Chatham between your house and the crematory?

A. Yes, a few shanties; nothing much.

X Q. 2. Only shanties?

A. That is all.

X Q. 3. These houses between you and the crematory, are they occupied?

A. Yes, sir.

X Q. 4. Do you know the names of any of the parties who live there?

A. Yes, sir.

X Q. 5. Who lives between you and the crematory?

A. Mrs. Ayers lives, she is living on Jackson and Park, paying no rent, or she would not be there.

X Q. 6. Who else?

A. There is Coonalan, he is paying no rent. He is a tenant of John Centers.

X Q. 7. Who else?

A. I don't know, there is Mrs. Gilbert, she is down on Sixteenth street.

X Q. 8. I am speaking now of people who live between your house and the crematory.

A. I only know those few around there; I don't know them down on Sixteenth street.

439 X Q. 9. Now, this smoke that you speak of, is that most troublesome when the wind is blowing hard, or when it is calm?

A. I think heavy days when there is a little fog and a little sun.

X Q. 10. You understand what a barometer is? When the barometer is low, that is, when the air is light, then the smoke is heavy and settles down, then, it is high.

A. I think so, yes.

X Q. 11. Now, then, suppose it is a stormy day in winter?

A. It don't smell so bad then; it seems to go past then.

X Q. 12. But the winds that we have in summer time here, the west winds, how do they affect you?

A. It comes all the same, not as bad, but the north or northwest winds is what affects us most, in the evening if it is a warm evening I could not raise the window; the air is heavy, you know, and it comes right in and you smell it all the time.

X Q. 13. Is your house on high land?

A. Yes, sir, on good solid ground.

X Q. 14. I know, but is it elevated at all, is there much of a hill there?

A. No, we had to grade Mariposa street, most of it.

X Q. 15. How high do you think the top of the chimney is over your house? Have you any idea of that at all?

440 A. Oh, I could not tell you. It is not so very much because they are away down in the marsh below.

X Q. 16. You are up on higher land?

A. I am up on higher land. We are on good solid land.

X Q. 17. Is it pretty thickly settled around there where you live?

A. No, not very, and it never will be while that crematory is there, for everybody complains of it.

X Q. 18. You are about on a line with the Union Iron Works, are you not?

A. I am about on a line with Ninth street; I think Ninth street goes past there.

X Q. 19. No, I mean you are on a line with the Union and sugar refinery. Aren't you on a line with the Union Iron Works?

A. Yes, but they are a long ways off; they are as much as fifteen or twenty blocks off.

X Q. 20. Don't you get any smoke from the Union Iron Works?

A. No.

X Q. 21. Or from the sugar refinery?

A. No.

X Q. 22. How far off are they?

A. Oh, there is a big hill between us.

X Q. 23. Around there near the Sanitary Reduction Works there are some factories, are there not?

A. I don't think so.

X Q. 24. You think not?

A. No.

X Q. 25. Isn't there a tannery around there?

A. No. Yes, there is a tannery.

441 X Q. 26 Isn't there a soap factory?

A. There is a soap factory on Santa Clara.

X Q. 27. Pretty close to the Sanitary Reduction Works, isn't it?

A. Two blocks off.

X Q. 28. Does any smell come from that?

A. Not very much. There is some smoke, you know, but I don't think it is anything injurious to a person's health.

X Q. 29. Isn't there two or three factories around there quite close to the Sanitary Reduction Works?

A. I don't know of anything at all. There is a sodaworks there. I never saw smoke from it. I don't know what they were doing. There is an old building there. We call it the sodaworks. I don't know whether it is running or not. There is an ice-house somewheres down there. I don't know what it is doing.

X Q. 30. Now, you have lived there for how long a time?

A. I have lived there since 1855.

X Q. 31. Now, the trouble about people living at the Potrero has been the bad titles you have had there, isn't it, Mrs. Chatham?

A. Well, we have been fighting them ever since we have been there and now comes the crematory to finish us up.

442 Examination-in-chief of D. P. QUINLAN, a witness called on behalf of respondent California Reduction Company, sworn.

(By Mr. LEAMING:)

Q. 1. State your full name.

A. D. P. Quinlan?

Q. 2. Where do you reside Mr. Quinlan?

A. I reside on 8th between Brannan and Harrison.
Q. 3. What number?
A. 482.
Q. 4. 482 what?
A. 8th street.
Q. 5. How long have you resided there?
A. On and off for twenty years.
Q. 6. Who owns the property?
A. I do.
Q. 7. How far is that from the crematory of the Sanitary Reduction Works?
A. Two blocks, a little over two blocks.
Q. 8. State whether or not you suffer any annoyance at your place by reason of the Sanitary Reduction Works?

(Objected to as irrelevant and immaterial.)

Q. 9. If so, state what it is.

(The same objection.)

A. The smell over there is very obnoxious sometimes; just when the wind is in the right direction. My house is well protected. I am better located than a good many people that are exposed. A good many people have to shut down their windows to keep the smell out.
Q. 10. What kind of a smell is it?

(The same objection.)

443 A. Oh, a heavy, sickening smell, disagreeable and noxious.
Q. 11. State whether or not that injures the enjoyment of your property.

(The same objection.)

A. It certainly does. The tenants come in, they come in and find the smell and they say "Fugh! the dumps!"
Q. 12. You don't tell them what it is?
A. I say that it is only that way very seldom, that it don't happen very often. Of course I make as light of it as possible.
Q. 13. These are tenants, you say?
A. Yes.

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. What is your business?
A. My trade is miller.
X Q. 2. What kind of a miller, flour?
A. Flour miller, yes, sir.
X Q. 3. Where do you work?

A. The last work I done was for the California distillery.

X Q. 4. How long ago was that?

A. I have not done much there for about two years; occasionally for three months. Last fall I worked there. I have not worked steady for two years; I work a month or two at a time in the year.

X Q. 5. Have you a family?

A. I have, sir.

X Q. 6. Where do you live?

A. 482 8th street.

444 X Q. 7. Now, have you tenants down there too?

A. I have, sir.

X Q. 8. Tenants who live there?

A. Yes, sir.

X Q. 9. How large is your lot?

A. Twenty-five by eighty-five.

X Q. 10. One building on it?

A. Two.

X Q. 11. You rent one and occupy one, eh?

A. I rent. There is two flats, and I live in the upper flat and rent the lower one. I live in the rear of the house.

X Q. 12. Are your houses pretty much occupied? Are they occupied most of the time?

A. No, sir, one family is leaving to-day.

X Q. 13. I am not speaking of to-day. I am asking about the last two years.

A. On and off; the tenement people move in there and move out. They don't stay very long.

X Q. 14. Have your houses been occupied pretty steadily during the last two years?

A. Yes, sir.

X Q. 15. What wind is it that troubles you in regard to this smoke? A wind in what direction?

A. Wind from the southeast, a little south of southeast?

X Q. 16. Then it is mainly in the winter time, isn't it?

A. Oh, it comes over in the night-time, it is the wind from that direction.

X Q. 17. You have southeast winds during the——

—. ——.

X Q. 18. What do you mean by occasionally?

445 A. Not steady, it don't blow steady from that direction, but sometimes the wind sweeps around that way and then the smoke comes It depends on the atmosphere if the atmosphere is heavy——

X Q. 19. (Interrupting.) Doesn't it blow steadily from the west in the summer time?

A. No, sir, it does not.

X Q. 20. How long have you lived in San Francisco?

A. Oh, I have lived in San Francisco for forty years.

X Q. 21. You say it does not blow steadily from the west during the summer time?

A. Certainly not.

X Q. 22. It blows from the southeast?

A. Mostly from the west or southwest. It is blowing to-day mostly from that direction, but the wind veers around sometimes.

X Q. 23. I am asking you as a general rule from day to day during the entire summer, doesn't it blow from the southeast?

A. No, sir.

X Q. 24. Does it blow once a month from the southeast?

A. I think oftener than that.

X Q. 25. It does, eh? Well, does the wind that blows from the west bother you at all?

A. No, sir.

X Q. 26. That is, this smoke, I mean.

A. No, sir.

X Q. 27. When it comes from the north does it bother you?

A. No, sir.

X Q. 28. Or from the east?

A. No, sir.

X Q. 29. It is only when it blows then from the south southeast?

A. Well, southeast, yes, sir.

446 X Q. 30. Who asked you to come here this morning?

A. A neighbor of mine said I had best come down. I didn't know but I was going to be subpœnaed as a witness until I came here.

X Q. 31. What was the neighbor's name?

A. Mr. Heitmuller.

X Q. 32. Mr. Heitmuller was a witness here, was he?

A. He was yesterday, I believe.

X Q. 33. He told you you had better come down.

A. He said, "Yes, come down and tell what you know."

X Q. 34. Were you subpœnaed?

A. No, sir.

X Q. 35. Were you promised witness fees?

A. No, sir, I was not.

X Q. 36. Was Mr. Heitmuller alone when he asked you to come down?

A. He was.

X Q. 37. Do you know who asked Mr. Heitmuller to talk to you in this case?

A. No, sir, I do not.

X Q. 37½. Do you know Mr. August Vetter?

A. I do not.

X Q. 38. Did you ever talk with anybody about this case?

A. No, sir; I have talked with the neighbors many times speaking about the horrid nature of that smell.

X Q. 39. I mean about what you were going to testify to to-day?

A. No, sir.

X Q. 40. Did you tell Mr. Heitmuller what you were going to testify to to-day?

A. No.

X Q. 41. Did you tell anybody else?

447 A. No, sir.

X Q. 42. You didn't tell any of these lawyers?

A. No, sir.

X Q. 43. You didn't tell anybody?

A. No, sir.

X Q. 44. Before the crematory was put up there they used to have the dumps, didn't they, down there?

A. Yes, sir.

X Q. 45. How did the dumps compare with the crematory for smell?

A. Well, they were bad enough, but I think the crematory is a good deal worse. Besides the sewer is being closed in since then.

X Q. 46. What sewer?

A. That sewer is shut up now.

X Q. 47. What has that got to do with the dumps?

A. I say there used to be a bad smell from the dumps before this crematory was put up, but I don't think that there is but very little of that now. I can distinguish that by the smell.

X Q. 48. Of course there is no smell from the dumps since they have stopped dumping.

A. Well, it is a different smell.

X Q. 49. Where did the smell come from?

A. It came from the sewer when the tide was backed up, it used to carry it up, kind of a nasty smell, but it never used to be as bad as this is.

X Q. 50. What sewer are you speaking of?

A. Channel Street sewer.

448 X Q. 51. You think that the smell that came from the dumps was really from the sewer, is that your idea?

A. Yes, sir.

X Q. 52. And that it wasn't from the dumps, that it was from the sewer.

A. I think it was from the sewer.

Examination-in-chief of R. F. MORTON, a witness called on behalf of respondents other than The California Reduction Company, sworn.

(By Mr. HARDING:)

Q. 1. What is your full name?

A. R. F. Morton.

Q. 2. What is your business?

A. Surveyor and draughtsman.

Q. 3. How long have you followed that business?

A. Fifteen or twenty years.

Q. 4. Have you at any time measured any of the garbage wagons for Mr. Levenson?

A. Yes, in December, 1898.

Q. 5. I hand you here a diagram. Is that a diagram showing the dimensions of wagons that you measured for Mr. Levenson?

A. Yes, sir.

Q. 6. Whereabouts did you measure these?

A. At a stable on Brannan street between 7th and 8th.

Q. 7. Now, how many wagons have you measured?

A. Three.

449 Q. 8. What is the cubic capacity of these different wagons?

A. The diagram shows it, sir.

Q. 9. Just tell what the diagram does show.

(Objected to as incompetent, irrelevant and immaterial.)

A. Wagon number 4 contains cubic feet 4.956.

Q. 10. Cubic feet?

A. Cubic yards. Wagon number six contains 4.91; wagon number five contains 5.57 cubic yards.

Q. 11. The measurements upon which these calculations were based were accurately and scientifically made?

A. They were measured with steel tape.

Q. 12. These figures that you have given of the cubic contents of these wagons are to the top of the highest board or box of the wagons?

A. Yes, sir.

Q. 13. Was anyone present when you got these measurements?

A. Mr. Epstein helped me make these measurements, assisted me in making the measurements.

Q. 14. Was Mr. Levenson present?

A. He was there during part of the time.

Examination of M. D. LEVENSON, recalled on behalf of respondents other than The California Reduction Company.

(By Mr. HARDING:)

Q. 1. Mr. Levenson, you have heard Mr. Morton testify, the witness who has just preceded you?

450 A. Yes, sir.

Q. 2. You employed him to measure the cubic contents of your wagons?

(Objected to as incompetent, irrelevant and immaterial.)

A. Yes, sir.

Q. 3. How many wagons did he measure for you?

(The same objection.)

A. Three.

Q. 4. Are those the kind of wagons that you employ in your business?

(The same objection.)

A. Yes, sir.

Q. 5. I want to ask you whether these wagons that were measured by Mr. Morton are the same wagons that you used in your business at the time when you delivered garbage to the Sanitary Reduction Works for which you received a bill under date of March 1, 1898, which bill has been marked Respondents' Exhibit Nos. 10 and 11, both, in this case?

(The same objection.)

A. Yes, sir.

Q. 6. Now, I notice by this exhibit that in many cases you were charged as high as ten and a half cubic yards of refuse as having been delivered on one of those wagons?

A. Yes, sir.

Q. 7. Is it possible for you to carry as much refuse or garbage in one of those wagons as was charged upon that bill?

451 (Objected to as irrelevant and immaterial, and as calling for an opinion of the witness.)

A. It is impossible.

Q. 8. Did you ever load the wagons above the level of the top board?

A. Not when I went to the crematory. We always took less so as to make the load smaller so as to take out the papers and stuff, you know.

Q. 10. You never sent them down with any stuff piled above?

A. No, sir, never did.

Q. 11. Are you quite prepared to say that you never delivered any load at the crematory containing as much as ten and two-thirds cubic yards?

A. Yes, I am prepared to say that.

Q. 12. Containing as much as nine and one-third cubic yards?

A. No, sir.

Q. 13. Or containing as much as seven and one-half cubic yards?

A. No, sir.

Q. 14. Have you ever delivered any containing as much as six cubic yards?

A. No, sir.

Q. 15. Would it be possible for you to load as much material above the level of the top board as was contained in the box wagons?

A. It would be impossible to do that.

Q. 16. Have you paid these people that bill marked Exhibit 1 and 11?

A. I have not.

Q. 17. What became of the matter?

452 A. Well, they threatened to sue me and attach me for the amount and I know it was an unjust bill and I told them "go ahead and sue. I have got proofs that we did not have as much," so I left Mr. Ellert's office one day and the next day he sent me a letter that he wanted to see me. He asked what did I do with the——

Mr. PIERSON: We object to that.

The WITNESS (continuing): He asked me what did I do with the invoice that he sent me and with the bill; he said that he wanted that bill. I told him I didn't have it with me just then. He said, "Go and bring that bill and I will give you a reduction," after he seen the bluff would not work, the bluff that he was going to sue.

Mr. PIERSON: I move to strike out that last sentence.

The WITNESS (continuing): So I went away and didn't go back again at all. So he sent me another letter to come and I came. He said, "Ain't you going to pay that bill," and I said "Not at that rate, Mr. Ellert," I said. He said, "Well, what do you want to pay?" I said, "I will pay you the same rate as I paid you before." "Well," he says, "you can find that bill, can you?" I said, "No, I can't find it. I can't find that bill; I put it somewheres. I didn't remember just where I put it." He seemed very anxious and wanted that bill back again, so finally he told his typewriter to make me out

453 a bill, I believe it was for $56 and something, instead of $156.

Q. 18. One hundred and seventy-three dollars and fifty cents this shows. There is a deduction from that, is there, according to the letter?

A. Yes he accepted the bill and we compromised the whole thing and that was the last of it.

Q. 19. You paid about $56 instead of $173.50?

A. The bill was less than $173 because I owed him $28 for the previous month. It is $173 less $28, I believe.

Q. 20. That amount you settled for $56?

A. For $56.

Mr. HARDING: We offer in evidence the diagram presented by the former witness.

(Marked "Respondents' Exhibit No. 12.")

Cross-examination.

(By Mr. PIERSON:)

X Q. 1. I understand you, Mr. Levenson, to testify now that you never sent either one of your wagons 4, 5 or 6 to the crematory, that was at all piled up over the top of the wagon?

A. No, sir, not to my knowledge.

X Q. 2. You so swear, do you?

A. To my best knowledge and recollection I never sent a wagon unless you see the bundles that go on top of the wagons; there might be a couple of bundles there of clean paper.

X Q. 3. Will you answer my question, Mr. Levenson? (X Q. 1 read.) Answer that yes or no.

454 No, sir.

X Q. 4. You never did?

A. No, sir.

X Q. 5. You didn't drive these wagons, did you?

A. I don't drive my own wagon, no, sir.

X Q. 6. You had three separate drivers?

—. Yes, sir.

X Q. 7. Did you see every load that went out to the Sanitary Reduction Works?

A. Yes, sir.

X Q. 8. You saw every load that went out there?

A. Yes, sir.

X Q. 9. You are willing now to swear that none of these wagons were loaded above the top?

A. I am, sir.

(It is stipulated between the respective counsel that the testimony upon the part of all the respondents in this action is now closed save and except that by consent of complainants the respondents will be permitted to introduce one additional witness upon the question or claim of a nuisance as to the character of the crematory, and will also be permitted to introduce certain proofs with reference to certified checks that were deposited with the city authorities in connection with the bid of Mr. Merle; and there may be a few questions that will be asked of Mr. Russell, clerk of the board of supervisors in regard to the records.)

Further hearing adjourned to Thursday, May 11, 1899, at 2 p. m.

455 THURSDAY, May 11, 1899—2 p. m.

Further hearing continued to Wednesday, May 17, 1899.

TUESDAY, May 23, 1899—2.30 p. m.

Counsel appearing:
For complainant, Wm. M. Pierson, Esq.
For respondent California Reduction Co., Alfred L. Black, Esq.

Testimony for Complainants in Rebuttal.

Examination-in-chief of JOHN H. LONG, a witness called on behalf of complainants, sworn.

(By Mr. PIERSON:)

Q. Mr. Long, what is your occupation?

A. What they call receiver or collector at the gate, at the Sanitary Reduction Works.

Q. 2. Of the Sanitary Reduction Works?

A. Yes, sir.

Q. 3. The complainant in this case?

A. Yes, sir.

Q. 4. How long have you been such?

A. Well, I have been in that position a little over a year, that is, on and off before that time.

Q. 5. How many collectors or gate-keepers have been employed there during last year?

A. Well, there are two of us there.

Q. 6. Yourself and who else?

A. Mr. Deluca.

456 Q. 7. Where is Mr. Deluca now?

A. He is down at the gate, sir.

Q. 8. He is on duty?

A. Yes, he is on duty; we can't both leave at once.

Q. 9. You can't both leave at the same time?

A. No, sir; not at the same time.

Q. 10. Were you gate-keeper and collector there during the time from March 27, 1899, down to and including the 3d day of May, 1899? I am speaking now of last month.

A. Yes, I have been there all the time except I might be to lunch, or I may be off half an hour; some days I am sent; I am there pretty much all the time.

Q. 11. Now from the 27th of March, 1899, to the 3d of May, 1899, who has been there most of the day, yourself or Mr. Deluca?

A. Myself.

Q. 12. In your position as gate-keeper or collector of the gate of the complainant Sanitary Reduction Works, what are your duties, Mr. Long?

A. To collect money from the scavengers for the loads they have on, and I charge them, and give them their ticket for the same.

Q. 13. Will you explain the method by which the scavengers drive up to the works with their load, pay the amount due and discharge their load and go off?

A. Yes; they come to the gate of the office, a little office that we have there, and I get up and come out and measure the load,

457 I look at the load and tell them the amount they have got on and the amount that they have got to pay, say fifty cents, or sixty or whatever it happens to be, and I go make out a check for them and I register it, I make a yellow ticket which you have there and write on this and it goes right through to the carbon making three tickets, so when I make one, I make three with the same impression. That yellow one or copy I give the scavenger one and there is one that goes down to the roller and one that we register on that goes down to Mr. Ellert next morning. That goes down to the regular roller and it does not get out until we take it out next morning.

Q. 14. Then it is an apparatus by which you can make three impressions at once.

A. Yes, it makes three copies of the same ticket, that is, two besides that one that you have there.

Q. 15. And one you give to the scavenger.

A. Yes, sir.

Q. 16. And one remains on your own roller?

A. It remains on the roller, yes, sir.

Q. 17. And the other one?

A. That yellow one there I keep.

Q. 18. Now, I will ask you to take wagon No. 12 and look over the tickets I now present to you and state whether they are tickets that you wrote at the time that wagon No. 12 delivered its load at the works during the days specified on these tickets.

A. I will. (Examines.) This is my ticket that I made out.

458 Q. 19. I wish now as to wagon 112 you would commence with the tickets which I hand you now and select such tickets as you personally made out.

A. Yes, I made that ticket out. (Showing.)

Q. 20. Well now, go through the whole of them and separate them.

A. (After separating:) I didn't make those two out. These I made out. (Showing.)

Q. 21. We will offer them in evidence afterwards. The tickets that you have now handed me and which I now lay in your hand were all written by you?

A. Yes, sir.

Q. 22. That is, whatever is written upon them; not the printed matter.

A. Yes, sir.

Q. 23. At the time when these loads were delivered?

A. Yes, sir.

Q. 24. And by you retained?

A. Yes, sir.

Q. 25. How did you retain them, in what way?

A. Well, I put them on file.

Q. 26. And the hole through there indicates where the file came up?

A. Yes; there might be sometimes one that is not on the file when Mr. Deluca goes away. He might leave it loose; sometimes you might find one that has got no hole in it.

Q. 27. Now, then, these have been in your possession ever since you wrote them except when you gave them to me.

459 A. No, sir; the next morning they go right down to Mr. Ellert's office.

Q. 28. Then they go down in connection with the roller, do they?

A. Yes, sir, all these go right down the next morning.

Q. 29. You don't know anything about the possession of them afterwards?

A. I don't know anything about the possession of them afterwards.

Q. 30. You recognize them now as being tickets that you made out?

A. I made them out myself, yes, sir.

Q. 31. Upon these tickets I find in printed matter "Number 4919" also I find in lead pencil "4919."

A. Well, that is to number the ticket that I give the scavenger also on the roller. It is blank on the roller. There is no printed number there on the ticket that I write on, and I mark that ticket with the same number that is printed on the ticket so that that indicates on the back that is on the roller, it indicates the number so if there is any mistake I can trace it back and see what ticket it was.

Q. 32. In other words by writing the number in this manner in lead pencil you strike that number upon the two carbon copies beneath.

A. Yes, sir.

Q. 33. Otherwise there would be no number upon these carbon copies?

A. No, sir.

Q. 34. The printed number being only on one ticket.

460 A. The printed number being only on one ticket, yes, sir.

Q. 35. Next I find the letter L. What does that mean?

A. That is my name, my initial, Long.

Q. 36. Then I find certain figures under the total, such as 4, 21, 99. What does that mean?

A. 4th month, 21st day, 1899.

Q. 37. And here I find number 5, 21, 99. That would mean 5th month, would it?

A. Yes, sir.

Q. 38. I find now opposite the word "number," figures in your handwriting, 12. What does that mean?

A. The number of the scavenger wagon delivering.

Q. 39. Opposite the word "yards" I find the figures 2½.

A. Two yards and a half.

Q. 40. Opposite the word "amount" I find "fifty cents."

A. That means the amount charged.

Q. 41. Now as to wagon number 12, can you testify, Mr. Long, as to how much of a load wagon No. 12 had on the 10th day of April, 1899?

A. No, I could not remember that now because I make the ticket just when it comes in. There is so many wagons of course I could not remember what amount each had on.

Q. 42. Could you tell by refreshing your memory by this paper?

461 A. I could know it was my writing; I could not say of course what day he came in or the amount he had on each day.

Q. 43. But by refreshing your memory for a certain day, you could tell the number of yards?

A. All I could tell is just what is on that ticket. That shows just

what he had on each trip. He may make two or he may make three loads that day.

Q. 44. You would give him a ticket for each load?

A. Yes, every load they have a ticket.

Q. 45. Now, I will ask you how many yards of garbage wagon No. 12 delivered to the complainants here on the 12th day of April, 1899 and how did you know?

Mr. BLACK: We object to the witness using the paper which he has handed in, to refresh his memory, he having stated that he has no recollection on the subject and that the paper in no way refreshes his memory other than the facts that are stated on the paper itself as facts.

(By Mr. PIERSON:)

Q. 46. I will ask you whether you can testify as to that particular transaction except by looking at that paper which you made at the time.

A. Well, I could not fix it on a certain day because there is too many of them coming in, but I know that I gave them these tickets. I know that I made out these tickets at the time.

Q. 47. You could not testify without having that before you?

A. No, I could not go back and tell what he had on each day.

462 (Question 45 read.)

A. Well, he surely had on three yards and a quarter that day.

Q. 48. How much did he pay at that time?

A. Sixty-five cents.

Q. 49. Now, I will ask you as to the same wagon on the same day, second load, the number of yards and how much he paid.

A. Two yards and a half, fifty cents.

Q. 50. The same wagon on the 11th of April?

A. Three yards, sixty.

Q. 51. The same wagon on the same day, second load.

A. Two yards, forty.

Q. 52. The same wagon on the 12th of April.

A. Three yards, sixty.

Q. 53. You mean three yards sixty cents?

A. Yes, sir.

Q. 54. Express it fully, please. The same wagon on the 13th of April.

A. Two yards and a half, fifty cents.

Q. 55. The same wagon on the 14th of April?

A. Three yards, sixty cents.

Q. 56. The same wagon on the 17th?

A. Two yards and three-quarters, fifty-five cents.

Q. 57. The same day, same wagon?

A. Three yards and a quarter, sixty-five cents.

Q. 58. On the 18th, the same wagon?

A. Two yards and three-quarters, fifty-five cents.

463 Q. 59. And on the same day, the same wagon, second load?

A. Three yards and a half, seventy cents.

Q. 60. On the 20th, the same wagon?

A. Three yards and a quarter, sixty-five cents.

Q. 61. On the 21st, the same wagon?

A. *Two yards and three-quarters, fifty five cents.*

Q. 62. Second load, same day, the same wagon?

A. Two yards and a half, fifty cents.

Q. 63. On the 22d, the same wagon?

A. Two yards and a half, fifty cents.

Q. 64. Now, as to these two tickets that are not in your own name, wagon No. 12 the 14th of April, 1899, and on the 19th of April, 1899, are not in your handwriting.

A. No, sir.

Q. 65. These are in Mr. Deluca's writing?

A. Yes, these are in Mr. Deluca's writing.

Q. 66. Both of them?

A. Yes, sir.

Q. 67. I wish you would take now the tickets I show you for wagon No. 13 for these same dates and take out those that are in your handwriting.

A. All of them are in my handwriting but three.

Q. 68. Those three being in Mr. Deluca's?

A. Yes, sir.

Q. 69. As to wagon No. 13 the 3d of April and 15th of April, 1899.

A. Yes, sir.

Q. 70. Now, I wish you would take these tickets and testify as to the loads of garbage delivered at the Sanitary Reduction Works by wagon No. 13 upon the various days shown here giving the

464 dates, number of yards and price paid.

Mr. BLACK: We make the same objection that was made to the preceding similar question.

A. On the 4th of April he had three yards and a half, seventy cents.

Q. 71. You are testifying now as to the number of yards that you measured in their wagons and the price that they paid?

A. And the price that they paid, yes, sir.

Q. 72. Now, go on.

A. On April 5, three yards and a half, seventy cents; April 6, four yards and a half, ninety cents; April 8, two yards and three-quarters, fifty-five cents. April 8 again, three yards, sixty cents; April 10, four yards and a half, ninety cents; April 11, three yards and a quarter, sixty-five cents; April 12, two yards and three quarters, fifty-five cents; April 13, four yards, eighty cents; April 14, the four is torn off; the price is eighty cents. The four is torn off.

April 15, three yards, sixty cents; April 17, three yards and three quarters, seventy-five cents; April 18, three yards and a quarter, sixty-five cents; April 19, three yards and a half, seventy cents; April 20, three yards and three-quarters, seventy-five cents; April 21, three yards and a quarter, sixty-five cents; April 22, three yards, sixty cents; April 22, three yards and a quarter, sixty-five cents; April 24, three yards and a quarter, sixty-five cents.

465 *Q. 73. Now examine the tickets as to wagon No. 21 and* select those that you made yourself. (The witness does as directed.) All of those handed you except those of April 11, 19, 21 and 27, and May 5 and 8 are in your handwriting, made by you at the time?

A. Yes, sir.

Q. 74. Now, will you state the number of yards of garbage delivered by wagon No. 21 upon the various days mentioned in those tickets and the amount paid by the scavenger therefor?

Mr. BLACK: We make the same objection as was made to the last similar question.

A. April 5.

(By Mr. PIERSON:)

Q. 75. Now, this is wagon No. 21.

A. This is wagon No. 21, yes, sir.

Q. 76. April 5th?

A. Two yards and three-quarters, fifty-five cents. Now this is the 3d month, 31st day.

Q. 77. That is March then?

A. Yes, sir.

Q. 78. Well, I want them all.

A. That would be five yards, $1. On the 3d month, 30th day——

Q. 79. (Interrupting.) That is March 30?

A. Yes, sir. Four yards and a quarter, eighty-five cents. On the 4th month, 29th day——

Q. 80. (Interrupting.) That is April 29.

A. Three yards and a quarter, sixty-five cents; March 28,
466 four yards and a half, ninety cents; March 29, two yards, forty cents; March 27, four yards, eighty cents; April 27, two yards and a half, fifty cents. April 26, three yards and three-quarters, seventy-five cents; April 25, four yards and a half, ninety cents; April 24, three yards and a half, seventy cents; April 22, two yards and three-quarters, fifty-five cents; April 20, three yards, sixty cents; April 19, two yards, forty cents; April 18, four yards, eighty cents; April 17, three yards, sixty cents; April 15, three yards and a quarter, sixty-five cents; April 14, four yards and a half, ninety cents; April 13, four yards and a half ninety cents; April 12, two yards and three-quarters, fifty-five cents; April 12, two yards and a half, fifty cents; April 7, four yards and a half, ninety cents; April 6, three yards and a half, seventy cents; April

4, four yards, eighty cents; April 4, two yards, forty cents; April 3, four yards and a half, ninety cents; April 3, three yards and a quarter, sixty-five cents; April 1, three yards, sixty cents; April 3, two yards and a half, fifty cents; April 2, four yards and a quarter, eighty-five cents; April 1, two yards and three-quarters, fifty-five cents.

Q. 81. Now, as to wagon No. 26. Will you kindly look at that and see which of these tickets are made by you. (The witness makes the selection as directed.) All of them excepting those of March 27, April 27, April 28, April 29 and May 3, are in your handwriting?

A. Yes, sir.

Q. 82. Made by you at the time of the delivery?

A. Yes, sir.

467 Q. 83. Now, will you state, Mr. Long, what number of yards of garbage wagon No. 26 delivered at the Sanitary Reduction Works on the days mentioned in these tickets and what the scavenger paid therefor.

(Objected to as incompetent on the same grounds heretofore stated.)

A. Yes, sir.

Q. 84. Just give the date, number of yards and amount paid by the scavenger?

A. April 1, three yards and a quarter, sixty-five cents; April 3, one yard and three-quarters, thirty-five cents; April 26, two yards and a half, fifty cents; April 25, three yards, sixty cents; March 28, three yards and a quarter, sixty-five cents; March 29, two yards and three quarters, fifty-five cents; March 30, two yards and three-quarters, fifty-five cents; March 31, three yards and a quarter, sixty-five cents; May 1, one yard and three-quarters, thirty-five cents; May 2, two yards and a half, fifty cents.

Q. 85. These are all?

A. These are all.

Q. 86. Now, as to wagon No. 28, kindly go over these tickets which I now show you and see which are in your handwriting and which were not made by you at the time of the various deliveries. (The witness separates the tickets.) All of these excepting those bearing the dates March 1, 13, and 18. Now, please state what number of yards of garbage wagon No. 28 brought to the Sanitary

468 Reduction Works upon the various days named on these memoranda and the amount paid by the scavenger for each load?

(The same objection as heretofore stated to the last similar question.)

A. March 27, four yards, eighty cents; March 28, three yards, sixty cents; March 28, three yards and a quarter, sixty-five cents; April 1, three yards and a quarter, sixty-five cents; April 3, three

yards and three-quarters, seventy-five cents; April 4, three yards, sixty cents; April 4, two yards and three-quarters, fifty-five cents; April 5, four yards, eighty cents; April 6, three yards and a half, seventy cents; April 7, three yards and three-quarters, seventy-five cents; April 8, three yards and a quarter, sixty-five cents; April 8, one yard and a half, thirty cents; April 10, three yards and three-quarters, seventy cents; April 11, two yards and a half, fifty cents; April 11, three yards, sixty cents; April 12, three yards and three-quarters, seventy-five cents; April 14, three yards and a half, seventy cents; April 15, 4 yards and a half, ninety cents; on the 17th, three yards and three-quarters, seventy-five cents; April 18, two yards and three-quarters, fifty-five cents; April 19, four yards, eighty cents; April 20, three yards and a quarter, sixty-five cents; April 21, three yards and three-quarters, seventy-five cents.

Q. 87. Now, as to wagon No. 32, please examine the tickets now produced and see which of them are in your handwriting, made by you at the time of the various deliveries mentioned. (The
469 witness separates the tickets as directed.) All but those of April 4, 6, and 21 are in your handwriting, made by you?

A. Yes, sir.

Q. 89. Now, will you state, Mr. Long, if wagon No. 32 delivered loads of garbage at the Sanitary Reduction Works on the various days mentioned in these tickets, how many yards were in each load and what the scavenger paid for each load.

(The same objection.)

A. On March 27, three yards and a quarter, sixty-five cents; March 28, three yards, sixty cents; March 19, three yards, sixty cents; on the 30th, three yards and half, seventy cents; April 1, three yards, sixty cents; April 3, three yards and half, seventy cents; April 5, three yards, sixty cents; April 8, three yards, sixty cents; April 10, three yards and a quarter, sixty-five cents; April 11, two yards and a half, fifty cents; April 3, three yards, sixty cents; April 13, three yards sixty cents; April 14, two yards and a quarter, sixty-five cents; April 15, two yards and three-quarters, fifty-five cents; on the 17th, three yards and a quarter, sixty-five cents; April 19, two yards and three-quarters, fifty-five cents; April 20, three yards and a half, seventy cents; on the 22d, two yards and three-quarters, fifty-five cents.

Q. 89. Now, as to wagon No. 47, which I show you, please separate these tickets and tell us which were made in your handwriting and which not. (The witness does as directed.) All these except-
470 ing those bearing date of April 24, and April 28, and May 1st, are in your handwriting?

A. Yes, sir.

Q. 90. Made by you at the time of the various deliveries entered on them?

A. Yes, sir.

Q. 91. Now, will you state whether wagon No. 47 delivered gar-

bage at the Sanitary Reduction Works on the days mentioned in those tickets and if so, state how many yards of garbage each load contained and what the scavenger paid for those loads respectively.

(The same objection.)

A. On April 20, five yards and a half, one dollar, ten cents; April 21, four yards and a half, ninety cents; April 22, three yards and three-quarters, seventy-five cents; April 26, six yards, one dollar, twenty cents; April 27, two yards and three-quarters, fifty-five cents; on the 27th again three yards and quarter, sixty-five cents; April 18, four yards and a quarter, eighty-five cents; May 2, four yards and a half, ninety cents; May 3, five yards, one dollar.

Q. 92. Now, as to wagon No. 49, see which of these tickets are in your handwriting and made by you. (The witness separates the tickets.) All of them excepting the tickets bearing dates of March 31, 1899, and April 5th and 11th, 1899?

A. Yes, sir.

Q. 93. Now, will you state whether or not wagon No. 49 delivered loads of garbage at the complainant works at the various days mentioned in these memoranda and if so how many yards each load contained and the price paid by the scavenger for the respective loads.

471 (The same objection.)

A. March 27, one yard and a quarter, twenty-five cents; March 27, two yards and a half, fifty cents; March 28, four yards and a half, ninety cents; March 19, three yards and three-quarters, seventy cents; March 30, one yard and a quarter, twenty-five cents; March 30, three yards and three-quarters, seventy-five cents; March 31, four yards and a half, ninety cents; April 1, three yards and a half seventy cents; April 3, three yards and a quarter, sixty-five cents; April 3, one yard and a half, thirty cents; April 4, five yards, one dollar; April 6, three yards and a half, seventy cents; April 6, one yard and a quarter, twenty-five cents; April 7, one yard and three-quarters, thirty-five cents; April 7, three yards and a half, seventy cents; April 8, three yards, sixty cents; April 10, four yards, eighty cents; April 12, three yards, sixty cents; April 13, one yard and a half, thirty cents; April 13, three yards and a half, seventy cents; April 14, three yards and three-quarters, seventy-five cents April 15, one yard, twenty cents; April 17, three yards, sixty cents; April 17, one yard, twenty cents; April 18, three yards and three-quarters, seventy-five cents; April 19, two yards and three-quarters fifty-five cents; April 19, four yards, eighty cents; April 20, three yards and a half, seventy cents; April 20, three yards and three-quarters seventy-five cents; April 21, three yards and a quarter, sixty-five cents; April 21, two yards and a half, fifty cents; April 22, three yards, sixty cents.

472 Q. 94. Now, wagon No. 80, Mr. Long, please examine the tickets now shown you and state which are in your hand-

writing. (The witness separates the tickets.) All of these except those bearing the dates April 20, 21, and 22, 1899. Now will you state whether wagon No. 80 delivered garbage at the Sanitary Reduction Works on the day mentioned in these memoranda?

A. Yes, sir.

Q. 95. How many yards were so delivered and what did the scavenger pay respectively for each load?

A. March 22, five yards, one dollar; March 29, three yards, sixty cents; March 30, three yards, sixty cents; April 24, five yards, one dollar.

Q. 96. Now, as a wagon No. 107. Please examine these tickets and see which are in your handwriting. (The witness does as directed.) All of them are in your handwriting except those of April 10 and April 27 and April 28, 1899. Is that so?

A. Yes, sir.

Q. 97. Now, then, did wagon No. 107 deliver garbage to the Sanitary Reduction Works on the days mentioned in these memoranda if so, just state how many yards were so delivered and how much the scavenger paid for each load respectively.

(The same objection.)

A. March 27, three yards, sixty cents.

Q. 98. This was 1899?

A. Yes, sir. March 27, three yards and a half, seventy cents; March 28, four yards and a half, ninety cents; March 29,
473 two yards and three-quarters, fifty cents; March 29, two yards and a half, fifty cents; March 30, two yards and a half, fifty cents; March 31, three yards and a quarter, sixty-five cents; April 1, two yards and three-quarters, fifty-five cents; April 3, three yards and a quarter, sixty-five cents; April 3, four yards, eighty cents; April 4, three yards and three-quarters, seventy-five cents; April 5, four yards and a quarter, eighty-five cents; April 6, three yards, sixty cents; April 7, two yards and a half, fifty cents; April 7, two and one-half yards, fifty cents; April 10, four yards, eighty cents; April 11, three yards and a quarter, sixty-five cents; April 12, four yards and a quarter, eighty-five cents; April 13, two yards and three-quarters, fifty five cents; April 13, three yards, sixty cents; April 14, three yards, sixty cents; April 14, three yards and a quarter, sixy-five cents; April 15, two yards and a half, fifty cents; April 17, three yards and three-quarters, seventy-five cents; April 18, three yards and a quarter, sixty-five cents; April 20, three yards and a qnarter, sixty-five cents; April 20, three yards and a quarter, sixty-five cents; April 21, three yards and three-quarters, seventy-five cents; April 21, three yards, sixty cents; April 22, three yards, sixty cents; April 24, two yards and a half, fifty cents; April 24, three yards and three-quarters, seventy-five cents; April 25, three yards and a half, seventy cents; April 26, four yards eighty cents; April 27, three yards and three quarters,

seventy-five cents; April 28, three yards and a half, seventy
474 cents; April 29, two yards and three-quarters, fifty-five cents;
May 1, three yards and a half, seventy cents; May 1, four yards, eighty cents; May 2, three yards, sixty cents; May 2, three yards and a half, seventy cents.

Q. 99. Now as to wagon No. 121, state if these memoranda are in your handwriting.

A. Yes, sir.

Q. 100. Did wagon No. 121 deliver garbage to the Sanitary Reduction Works on the days mentioned in those memoranda respectively?

A. Yes, sir.

Q. 101. If so, what number of cubic yards were delivered and what prices were paid by the scavenger for each load?

(The same objection.)

A. On March 27, three yards, sixty cents; March 28, three yards and a quarter, sixty-five cents; March 30, three yards, sixty cents; April 1, three yards and three-quarters, seventy-five cents; April 24, three yards, sixty cents; April 15, two yards and three-quarters, fifty-five cents; April 27, three yards, sixty cents; May 2, two yards, forty cents.

Q. 102. Now as to wagon No. 123, which one of those memoranda are in your handwriting? (Showing. The witness separates the tickets.) All of them excepting those bearing the dates April 15, 18, 20, and 21. Is that so?

A. Yes, sir.

Q. 103. Now, did wagon No. 123 deliver garbage at the Sanitary Reduction Works on the days mentioned in those memoranda?

A. Yes, sir.

475 Q. 105. If so, what number of cubic yards were so delivered and what was the price paid respectively by the scavenger for the delivery of them?

(The same objection.)

A. April 14, two yards and three-quarters, fifty-five cents; April 15, three yards and half, seventy cents; April 17, three yards and a quarter, sixty-five cents; April 22, three yards and a half, seventy cents; April 24, three yards and a quarter, sixty-five cents.

Q. 105. Have you ever received any instructions, Mr. Long, from the president of the Sanitary Reduction Works, Dr. Ellert, or from anyone in charge as to making charges for the delivery of garbage at the Sanitary Reduction Works?

A. I never had any orders excepting only from Mr. Ellert.

Q. 106. What were those instructions?

(Objected to as incompetent and not the best evidence. Question withdrawn.)

Q. 107. Have you to your knowledge ever made any overcharge

to any scavengers delivering garbage to the Sanitary Reduction Works?

(Objected to as calling for a conclusion of fact of the witness, and as a leading question.)

A. I never to my knowledge, I never have made it. I have made this way, I have overcharged them sometimes five cents and when I did they went up and measured it in the boxes and always got a rebate. I didn't do it knowingly, at any time.

476 Q. 108. Now, in your experience there at the Sanitary Reduction Works, is it a matter of frequent occurrence for the scavengers to demand a remeasurement of their loads?

A. Well, sometimes, some days there we have three or four measurements, and sometimes none at all; sometimes one or two when I am at the gate. Sometimes there will be four or five.

Q. 109. What is the custom of allowing them to measure or not?

A. We always allow them to measure. They have a ticket to go upstairs and there is a man up there to measure for them.

Q. 110. Now, you testified as to these tickets, you say you deliver one of these copies that you make to the scavengers?

A. Yes, sir.

Q. 111. What in practice does he do with the ticket?

A. He goes on to the platform and if he wants to measure his load then the man there gives him a ticket and he goes upstairs and this man measures his load. He dumps his garbage into a box and levels it off and if there is a rebate coming to him, he gets it down at the office.

Q. 112. That is if he has been overcharged at the gate?

A. He gets a rebate.

Q. 114. Now, suppose he has been undercharged at the gate?

A. He has to pay the difference when he measures.

Q. 114. Does it frequently or infrequently happen that he is undercharged?

477 A. It very often happens that he is undercharged at the gate.

Q. 115. Have you any knowledge, Mr. Long, about the condition in which garbage arrives at the reduction works, whether it arrives in its natural condition or in a compressed condition?

A. Compressed, all of it.

Q. 116. What is your experience upon that subject, Mr. Long?

A. Well, I have seen the garbage, sir, where it has been compressed down so that when they dumped the wagon back they would have to take a pick and get it out.

Q. 117. It would not come out itself?

A. No, sir; it is mostly always compressed; always compressed to a certain extent.

Q. 118. Is that a common or uncommon practice with the scavengers?

A. Oh, it is common.

Q. 119. Have you ever seen them actually compressing the garbage?

A. I have seen them stamping on it more than once myself, but not being away from there any time I don't see them so much of the time.

Cross-examination.

(By Mr. BLACK:)

X Q. 1. Mr. Long, I understand you to say that in examining all of the tickets which Mr. Pierson has been handing you, that you had absolutely no recollection of the transactions themselves
478 and that the giving to you of these tickets gave you no further impression by which you could recollect the circumstances. Was I right?

A. Well, yes, I could not remember back, well, say to March or April, any certain day, any certain time when a certain wagon came in of course.

X Q. 2. You cannot, by examining any number of tickets that you have examined, recollect the circumstances of that particular wagon coming up at that time.

A. I could not swear to that certainly. I know that I can tell what is in my handwriting. They must have had that ticket before they could get to the dump.

X Q. 3. What I am trying to find out is, when you examined the tickets you recognized that you made the tickets?

A. Yes, sir.

X Q. 4. And you believe that you made them properly at the time you made them?

A. Yes, sir.

X Q. 5. That is all that you wish to be understood as testifying?

A. Yes, exactly.

X Q. 6. Now, Mr. Long, I understood you to say that your business as gate-keeper was to measure the wagons. That is one part of your business?

A. Yes, sir.

X Q. 7. How do you do that?

A. Well, I take a three-foot stick, a yard-stick.

X Q. 8. Now, take during the time Mr. Pierson has been questioning you, that is, from March 27, 1899, down to May 3, 1899, do you mean to say that you saw every wagon that came up
479 there?

A. No, I didn't say that. I used to take a three-foot stick and measure. Now I just look at the wagon as it comes up. I know just about what is in them without measuring.

X Q. 9. Then as to all of the wagon loads that you have testified concerning to-day, you mean to say that you didn't measure any of them, but you simply estimated the amount of garbage they contained. Is that correct?

A. Once in a while I measure a wagon. I don't always. That is, I generally look at the most of them.

X Q. 10. Take the tickets that you have testified to. Have you any idea of the proportion of wagons represented by those tickets that you have measured?

A. I just look at them. At first I used to measure a good many of the wagons. Even now I measure them sometimes. But I usually just look at them. I just look at the wagon and tell the scavenger how much is in it and he gets his ticket and goes to the dump. If he calls for a measurement, he goes up and gets it measured and it is most always correct.

X Q. 11. You testified here concerning a large number of wagons that you have been examining. Can you give any idea of the proportion of these which you have measured?

A. No, I don't know. I could not give you any idea only that at first I used to measure them, but now I don't measure hardly any of them at all.

480 X Q. 12. Now then, the ones that you did measure, what did you measure them with?

A. Just a three-foot stick.

X Q. 13. A yard-stick?

A. You might call it a yard-stick. It is one that I made. It is a three-foot stick measured with a rule.

X Q. 14. You measured it personally?

A. Yes, with a rule. I do my measuring with that yard-stick.

X Q. 15. And you know that the stick that you had to measure with was exactly three feet long?

A. Yes, three feet long.

X Q. 16. Now then, are those wagons all full when they come there?

A. Oh, no, some of them are only partly full and some of them are really more than full.

X Q. 17. How do you measure a wagon that is more than full?

A. I just measure along the height and width.

X Q. 18. Don't you know as a matter of fact that all those wagons you have been testifying concerning are licensed wagons? That is true, is it not?

A. I suppose they are licensed wagons.

X Q. 18. And the numbers that have been referred to are licensed numbers?

A. I suppose they are; I don't know for certain about their licenses.

X Q. 19. And as a matter of fact, these wagons have all been measured by the city and county surveyor?

481 A. Some of them have these measurements on the side of them.

X Q. 20. How do these measurements that you have been testifying concerning, compare with the measurements on the sides of the wagons?

A. It does not compare at all.

X Q. 21. Your measurements then, are they larger or smaller?

A. Larger.

X Q. 22. About what proportion?

A. I think about one-third larger.

X Q. 23. How is it that your measurements are one-third larger than the measurements on the wagons by the city and county surveyor?

A. Well, I don't know how it is, but they tramp it down.

X Q. 24. The wagon does not get any smaller by tramping the garbage down.

A. The garbage does, though.

X Q. 25. Oh, then you mean to say that you estimate how much loose garbage there would be in the wagon that is tramped down? Is that it?

A. Not loose garbage exactly. No, I look at the wagon and size up the load and I charge him so much and they have got to pay so much, but if they want it measured, they go up stairs and it is measured in a box up there that has been measured by the surveyor.

X Q. 26. You mean to say that your purpose is to measure the wagon at the gate in such a way that if the material that is
482 in the wagon is poured out into one of the boxes upstairs that your measurement would correspond with the measurement of the material poured in the boxes upstairs? Is that it?

A. Oh, no, not at all.

X Q. 27. What do you mean?

A. Simply this way, I would look at the wagons and tell him what is on it and charge him so much.

X Q. 28. Well, now, what do you mean? Do you mean that you estimate what is contained in the wagon pressed down about as you say it is, or after it is taken out?

A. I mean my measurement is supposed to be when it is dumped into the box.

X Q. 29. If a wagon comes in you estimate it according to what you think is in the wagon? If you estimate there is six yards in the wagon you charge him for that?

A. Yes, sir.

X Q. 30. You mean when you put your estimate on, you state in your judgment that there is enough garbage in that wagon that if poured into a box upstairs would measure six cubic yards?

A. Yes, sir.

X Q. 31. You don't mean to say that there would be six cubic yards if measured in the wagon.

A. Well, yes. Some wagons they have fully six cubic yards.

X Q. 32. You don't understand what I mean, I think. It is true, Mr. Long, is it not, that garbage or such material as the scav-
483 engers have, compressed down, packed tightly, would measure less than if kept loose or than if just dumped loosely in the box. That is a fact is it not?

A. Well, of course if it is pressed down at all and not kept loose I suppose it is true.

X Q. 33. Your purpose in measuring the garbage was to estimate the quantity not pressed down, or the quantity that would be if dumped out in a box. Is that right?

A. It dumps out in the boxes, it dumps out just the same as in the wagons provided it is thrown into the wagon.

X Q. 34. But then it has been shown by these figures that you have been giving here upon your estimate of the measurement of the cubic yards contents of the garbage that you made your estimate upon what there would be if the garbage was just thrown in the wagon without being pressed down.

A. Yes, sir.

X Q. 35. It is an estimate of how much the wagon body would hold when it is placed in just even full, and not how much it would contain if it had been pressed in.

A. When I measured the wagons with this yard stick, I measured it so as to judge what the wagon would hold, and I always got at it and found out just about the size of the wagon. But I only just look at it now.

X Q. 36. I understood that you stated a while ago that if
484 pressed down in the wagon the garbage would be about one-third less than when it was measured in the box, did you not?

A. Well, it would be just about one-third less. Now they put their garbage in the wagon and in running over the streets it is naturally settled some, and that is to be expected. Then they get on it and tamp it down.

X Q. 37. Then, when they do this, it makes a decrease in bulk of about one-third?

A. I should judge about one-third.

X Q. 38. So when you measure their garbage you add one-third?

A. No, I don't add nothing.

X Q. 39. But in your making of your estimate you don't take the exact measurement of the wagon? You say *and* when the garbage is tamped down it measures one-third less. Estimated in that way the actual measurement of two yards of garbage in the wagon, measured in the boxes of the company would be three yards. Now, then, that wagon comes to you and it is loaded even full with garbage and you find that that garbage has been pressed down and stamped in, do you mean that you would take that for two yards, if it measured two yards in the wagon, or would you charge them for three yards?

A. Well, it would be about two yards and a quarter, or two yards and a half.

X Q. 40. Well, but you said it decreased one-third?

A. About one-third.

X Q. 41. Then if it increases one-third, it would be three yards instead of two?

485 A. It is according to the wagon and the stuff that is in it. There is stuff that you can't compress at all and there is stuff that you can compress.

X Q. 42. When a wagon is taken upstairs and measured in the boxes is it pressed down when it is measured there?

A. No, it is just dumped in the box just as it goes in. The man there takes a big rake and levels it off.

X Q. 43. And you say there is some considerable dispute, or rather, there is frequent dispute with the scavengers about your measurements?

A. Well, there is a little; sometimes there will be four or five a day, and sometimes none at all. There will be maybe, one, two, three or four or so, not on an average; it goes up to about three or maybe four loads a day.

X Q. 44. What objection do they make?

A. Well, they think I charge them too much.

X Q. 45. They think you charge them too much?

A. Yes, they think I charge them too much, and they want it measured, and they get a ticket from that man on the platform, or sometimes I give them a ticket to measure, and then they go up and measure the loads. Sometimes they never come back for any rebate, so I guess the tallies come even. Once in awhile they get five cents rebate.

X Q. 46. And sometimes they have to pay something?

A. Sometimes they have to pay something; very often they have to pay something.

X Q. 47. Very frequently, do they not?

486 A. No, they don't have to pay something oftener than they get a rebate; not quite so often, maybe.

X Q. 48. Now, you say they object to your measurement?

A. Well, it is only a few.

X Q. 49. Do you then give them the measurement of the wagon, or do you make them deliver their garbage outside?

A. No, they take it upstairs to the box that has been measured by the city and county surveyor.

X Q. 50. Well, then, does he take the measurement of the wagon?

A. No, sir, it is dumped into these boxes and measured in the boxes.

X Q. 51. You don't take their measurement on the wagon up stairs?

A. No, sir, no more than I take their measurement when I measure their garbage. I don't take their wagon measurement.

X Q. 52. Now, then, is it not a fact that the whole bone of contention between the scavengers and yourself in regard to your measurement is that the scavengers claim that they are entitled to pay by their wagons measurement in accordance with the marks put on it by the city and county surveyor, and you contend that they must pay according to the box measurement up stairs? That is the whole bone of contention, is it not?

A. Well, there is very few object to my measurement.

487 Once in awhile they want their loads measured, and I tell them to go upstairs and have it measured. Some of them do, and some of them don't.

X Q. 53. That is the bone of contention, is it not?

A. I don't know what you mean by the bone of contention. When they object to my measurement I tell them to go upstairs and have it measured.

X Q. 54. And your judgment is that there is about one-third difference between the wagon measurement and the box measurement.

A. Well, sometimes; it is not always the case. It is not always so in all loads.

X Q. 55. Between the pressed down loads and the loads that are thrown into the box you say they vary about one-third?

A. Where they press a load down very tight there might be one-third difference.

X Q. 56. When you say that you never made an overcharge you mean according to the box measurement?

A. I mean according to what they have in their wagon.

X Q. 57. As measured by your boxes there?

A. As measured by our boxes there; yes, sir.

X Q. 58. Those boxes I presume are all in the same condition that they were when you made them?

A. Yes; the same condition; at least they look like it to me.

Redirect examination.

(By Mr. PIERSON:)

488 R. Q. 1. Mr. Long, in answer to a question of counsel referring to the loose garbage in those boxes, when a scavenger dumps his load into those boxes, is it loose in the box?

A. It goes into the box the same as it is in the wagon, or out of the wagon, rather, and then it is spread over by a big rake. It goes into the boxes just the same as it comes out of the wagons. Of course, it comes out in a solid mass, generally, and it is then spread over in the boxes.

R. Q. 2. Isn't it looser in the boxes than before the scavenger has dumped it into the boxes? Is it not looser in the boxes than when it was originally put in the scavenger wagon?

A. No, sir, not a bit looser.

R. Q. 3. It is just as solid in one case as in the other.

A. It is just as solid in one case as in the other. Just about as if you would take it and throw it into the wagon.

R. Q. 4. Now, you spoke about estimating the number of yards in the wagon by your familiarity with the measurement of the wagons themselves? Do you know all of these wagons?

A. Yes, sir.

R. Q. 5. You have known them for months?

A. Yes, sir.

R. Q. 6. You have seen them every day?

A. I have seen them every day.

R. Q. 7. You have measured all of them actually, haven't you?

A. Well, yes, I guess I have measured every wagon that has come in.

489 R. Q. 8. Then it is simply from your recollection of your previous measurement that you estimate what they have got in a load?

A. Yes, sir.

Recross-examination.

(By Mr. BLACK:)

R. X Q. 1. Mr. Long you were speaking of pressing the garbage down in the wagon. Are you familiar with the way scavengers gather garbage in the city? You have seen them, I presume.

A. Well, I have seen them a little; not so much.

R. X Q. You have not seen them gathering garbage about the city. They will get a small amount of garbage and put in their wagon dumping it out of the barrel, then they get on top and press it down and the next house they go to they load in some more, their purpose being to get as much into a load as they possibly can. That is a fact, is it not?

A. Well, I don't know. I know that is the way that I have seen them do. I have seen them get up and dance on it and walk all around it.

R. X Q. 3. How long have you known of the scavengers business here in the city?

A. Well, I have never worked around it except when I was employed around there. I have seen them dump the last thirty-five years, not that long, no.

R. X Q. 4. How long have you been here?

A. Since 1860. Of course, not many scavengers were here when I came here.

490 R. X Q. 5. And they loaded it and tramped it down and danced around on it the same way ever since you first heard of it?

A. No, sir, they didn't tramp on it at that time. I never seen them dance on it until the crematory started.

R. X Q. 6. Didn't they do the same thing when they carried it down to the dumps?

A. No, I never seen them do it. They would make three or four loads possibly. They don't do that now. They only make one.

R. X Q. 7. Your idea is that they press it down more than they did?

A. Yes, they press it down more than they did. They press it down as tight as they can.

R. X Q. 8. Isn't it possible to get it all on the wagon without pressing it down?

A. They try to get all on the wagon they can. They try to get it as cheap as they can.

R. X Q. 9. You think they have two purposes now?

A. I think they do. They try to get in as much as they can in the wagon and they want to get it done as cheap as they can.

R. X Q. 10. If you were in that business, wouldn't you want to carry as much as you could on a load? It isn't heavy, is it?

A. Certainly I would want to carry all I could, and I would want to get it in as cheap as I could.

R. X Q. 11. Irrespective of what the crematory charged wouldn't you want to get as big a load on your wagon as you could
491 carry? It is not so heavy that it overweights a team, is it?

A. It is pretty heavy.

R. X Q. 12. What does one ordinary load weigh?

A. Well, according to what kind of stuff you put on it.

R. X Q. 13. An ordinary load of garbage.

A. It will weigh probably three ton, maybe more. We have some wagons there that holds five tons on them.

R. X Q. 14. How much does it weigh to the yard, have you any idea?

A. I don't know what it would weigh to the yard. I never weighed any of it.

R. X Q. 15. It would not weigh 1,000 pounds to the yard, would it?

A. I don't know; it comes pretty close to it; some of it would; it is heavy.

(It is stipulated between the respective counsel that the time for complainants to offer proof is extended to and including Saturday, May 27, 1899.)

Further hearing adjourned to Friday, May 26, 1899, at 2 p. m.

FRIDAY, May 26, 1899—2 p. m.

Counsel Appearing.

For complainant, Wm. H. Pierson, Esq.
For respondent California Reduction Co., E. B. Leaming, Esq.

492 Examination-in-chief of JOHN CENTER, a witness called on behalf of complainants, sworn.

(By Mr. PIERSON:)

Q. 1. Where do you reside, Mr. Center?

A. In the Mission Dolores, Shotwell and 16th streets, near Folsom.

Q. 2. How long have you been residing in San Francisco?

A. Since November, 1849. I have resided there all the time.

Q. 3. Continuously?

A. Continuously. Maybe three months to Europe or thereabouts; continuously.

Q. 4. Where have you resided during that time?

A. I resided a portion of the time at the corner of Folsom and 16th streets. Well, I built a house just about 100 feet west of that which goes to Shotwell and 16th.

Q. 5. How long have you lived at Shotwell and 16th streets?
A. Since that time; since 1849, the fall of 1849, continuously.
Q. 6. Are you a property owner in San Francisco?
A. I am.
Q. 7. Mainly in what locality?
A. In that locality. I have been a property owner since that time continuously.
Q. 8. A large or small property owner?
493 A. Well, we didn't call it large then; thirty or forty acres, or fifty acres we didn't count large; sometimes more.
Q. 9. Do you know the premises occupied by the Sanitary Reduction Works?
A. Yes, sir.
Q. 10. With reference to those works where is your property in the Mission?
A. It lies west. The street divides them.
Q. 11. Immediately west?
A. From Channel street, so called, to 16th street, even to 17th, right adjoining, right along; between Kansas and Rhode Island is on the east side. I am on the west side.
Q. 12. Approximately without being exact, how many lots have you in that locality?
A. Four blocks, nearly five blocks.
Q. 13. Is it improved or unimproved?
A. It is improved, gardens and some buildings and filling in; we are improving.
Q. 14. I mean with regard to the houses?
A. Well, there is houses there. There is gardens and houses at 16th street and at 17th street.
Q. 15. Occupied by your tenants?
A. Yes, sir.
Q. 16. Have you or not had occasion, Mr. Center, to pass in the vicinity of the Sanitary Reduction Works during the last two years?
A. I have been there mostly every day. I have been going on filling in the ground near by.
Q. 17. Have you ever had occasion to examine those works, I mean inside?
494 A. I think I was there when they were constructing them.
Q. 18. Do you recollect, Mr. Center, where the old dumps were for depositing garbage and filth, where they used to be?
A. I do. I used to smell it every day when the winds come from the east.
Q. 19. Where were those old dumps with reference to the present location of the Sanitary Reduction Works?
A. There was portions of them around there a little east of that.
Q. 20. When you say "around," do you mean completely surrounding the present reduction works?
A. It was east of the reduction works. We could not get to the

reduction works. It was a swamp; it lay on a swamp. Prior to their building the reduction works it was a perfect nuisance. When I went to build it was an intolerable nuisance.

Q. 21. Now how long a time were those dumps used for depositing garbage and refuse matter.

A. Well, it has been many years, many years.

Mr. LEAMING: Respondents object to testimony relating to conditions prior to the erection of the Sanitary Reduction Works upon the ground that it is irrelevant and immaterial to the issues in this case.

(By Mr. PIERSON:)

Q. 22. Now in the course of your daily walks or travels in the vicinity of the Sanitary Reduction Works, have you ever
495 noticed anything proceeding from those works that was deleterious to health or comfort?

A. I never have.

Q. 23. Do you know what the elevation of the chimney or smokestack of the reduction works is?

A. I think it is about 150; some way between 100 and 150; I won't be sure.

Q. 24. Isn't it over 250?

A. I can't tell you; it is a great elevation, maybe 250; I won't be sure about the figures that way, but it is quite an elevation.

Q. 25. Have you ever had any complaints from your tenants in regard to the operation of the Sanitary Reduction Works?

(Objected to as incompetent, irrelevant and immaterial to the issues and that the mere facts of complaints or noncomplaints are not evidence of the fact.)

Q. 26. Now answer the question, Mr. Center.

A. I never have. On the contrary everybody in the neighborhood has been anxious for its success in order to cover up the filth. It used to be so obnoxious whenever the wind blew in the fall of the year.

Q. 27. During the last three years have you been engaged in buying and selling real estate in that vicinity?

A. I have.

Q. 28. Do you know what effect, if any, upon the value of real estate the construction and operation of the Sanitary Reduction Works has had?

A. Property was unsalable before it went there. I think it has increased it 100 per cent. or more for the reason that the refuse
496 has filled up all the ground around. It has covered up that filth that formerly was obnoxious upon the surface of the ground.

Q. 29. To the eastward of the Sanitary Reduction Works and to the southward is the country there thickly settled or otherwise?

A. No, it is not thickly settled; it is thinly settled. It was unsalable until we could get such connection filling up and building on it. The ice factory is right down there. I could not give it away hardly until I filled it in.

Q. 30. Have you or have you not, Mr. Center, ever noticed in your daily travels in that neighborhood any offal or unburned paper or unburned matter of any kind?

A. I have never seen it. That would be — thing that could be easily stopped if it was so, because they could put up a grate around, if it was necessary.

Q. 31. You mean a spark preventor?

A. If it was necessary it would be an easy matter to put a wire screen; that would stop it, if there is such a thing.

Cross-examination.

(By Mr. LEAMING:)

X Q. 1. How far is your residence from the works of the Sanitary Reduction Works?

Mr. PIERSON: Do you mean in a straight line?

Mr. LEAMING: Yes, on a straight line, how far in distance?

497 A. I should guess somewhere about, more or less than half a mile; maybe half a mile.

X Q. 2. In what direction? West?

A. North and south; 16th street, I am on the north side of 16th street.

X Q. 3. In your judgment as I understand you——

A. (Interrupting.) I mean east and west; 16th street runs east and west.

X Q. 4. You are west from the crematory?

A. Yes, west.

X Q. 5. In your judgment, as I understand you, the smell from the dumps that used to exist before the crematory was built there was worse than any smell that comes at this time from the crematory. Is that right?

A. In the winter time and in the fall and in the spring when the winds come from the east, they brought the smell from there very strong, prior to the building of that institution.

(Question 5 read.)

—. Yes, we have no smell from the crematory, no sir, but formerly we had the filth of the whole flat. It was unbearable clear all over the Mission.

X Q. 6. What properties have you near the crematory at this time that are occupied by tenants?

A. There is that block that runs alongside of it, between Alameda and Channel, which I sold to the ice company. They have a large number of buildings there. The block immediately in front

of that is not filled in yet. It is partly filled in, but not
488 enough. There is probably two tenants in them. I am going to clean that off when I get it filled in so as to make the property in there in splendid shape. Going still south there is gardens that have been there forty years.

X Q. 7. How many tenants did you say you have occupying the properties of your own near the crematory?

A. Oh, I should say that there was a dozen.

X Q. 8. A dozen?

A. Yes, about a dozen.

X Q. 9. How near the crematory is the nearest?

A. Right adjoining blocks.

X Q. 10. How near to the crematory is the farthest away?

A. It would be about a block farther away.

X Q. 11. Then all the tenants that you have in the vicinity of the crematory are within a block of the crematory?

A. Yes, two blocks, say. For the reason that it was not possible to do anything with it until we could get it filled. It was a swamp; we were just in the act of filling it up so that people could occupy it. The crematory went in in the midst of the swamp and they filled it in all around. They filled the street from Division street to 16th street. That was the commencement, the first thing to be done.

X Q. 12. In what direction are your tenants from the crematory?

490 A. They are west of it; westerly, southwesterly and south, and the former tenants which I sold out was north, immediately north and west, close adjoining.

X Q. 13. Do — remain in the vicinity of the crematory over night, or do you sleep at your home?

A. I live at my home.

X Q. 14. You are not able then to state from your own knowledge whether there is any smell from the crematory, in the immediate vicinity of the crematory at that time?

A. I never was there in the night.

X Q. 15. But you are prepared to testify that you have not observed any bad odors in the vicinity of the crematory in the daytime?

A. No.

X Q. 16. None whatever?

A. None whatever. If I had I should be as sharp a man to act, to drive it out of there as anybody, because I have got a good deal of property there and around there, and I would be the first to drive it out of there, but I consider it a great benefit to the place, and with a little additional fuel it would be impossible for any smell to come out.

X Q. 17. What are you filling in the land with now?

A. With the stuff that comes from the crematory.

X Q. 18. You are filling in the low lands that you own with the ashes, that come from the crematory?

A. Portions of it. Wherever I can get it.

X Q. 19. Those ashes are being utilized for that purpose?

A. They are. They are a kind of rock; they are as solid as
500 as everything. Everything is burned out of them and they are as solid as any soil that you can get.

X Q. 20. Have you heard any complaints about the smell in the vicinity of the crematory?

A. I have not. I have read in the papers of people talking about it, but I have never heard any complaints.

X Q. 21. Have you any stock or any interest in any stock in the crematory?

A. Not a penny.

X Q. 22. Or has any member of your family?

A. No.

X Q. 23. None whatever?

A. None whatever.

X Q. 24. Are either of the properties owned by you in the vicinity of the crematory used for purposes of a boarding house or a hotel?

A. No, there is no hotel any place over there that I know of.

X Q. 25. They are small houses occupied by tenants?

A. Yes, sir.

X Q. 26. Are they tenants who are employed by you?

A. They rent the ground and do gardening.

X Q. 27. For you?

A. There is gardens been there, around there, for forty years.

X Q. 28. Then they work for you?

A. No, they rent the ground and work for themselves.

X Q. 29. They rent the ground from you?

501 A. Yes, they have done so for forty years. They have been cultivating all the time.

X Q. 30. They are tenants of yours who occupy the ground for gardening purposes? They lease of you?

A. Yes, sir.

Examination-in-chief of THOMAS PRICE, a witness called on behalf of complainant, sworn.

(By Mr. PIERSON:)

Q. 1. How long have you lived in San Francisco, Professor Price?

A. Thirty-six years and over.

Q. 2. Where have you resided during that time?

A. My place of residence has been on Taylor street and Post street, and the corner of Scott and Broadway.

Q. 3. What is your occupation or profession?

A. Analytical chemist.

Q. 4. How long have you been engaged in that profession?

A. For forty-five years or so.

Q. 5. How long in San Francisco?

A. During the whole time I have been here.

Q. 6. Your laboratory is on the corner of Leidesdorff and Sacramento streets?

A. Yes, sir.

Q. 7. And has been for many years?

A. Yes, sir. I have been in the old Pacific Mail building for twenty-three years, nearly twenty-four.

Q. 8. Have you had a large or small experience in analytical chemistry?

A. My experience has been very extensive in analytical chemistry.

502 Q. 9. Do you know the works here called the Sanitary Reduction Works?

A. On the south end of town, southeast end?

Q. 10. Yes, sir.

A. Yes.

Q. 11. Have you had occasion to examine those works, Professor?

A. Yes, sir.

Q. 12. With what view?

A. With a view to seeing if they may be considered a nuisance and more particularly with a view to investigating as to whether the combustion of the various materials that were brought there, of an organic nature, was complete or not.

Q. 13. Do you know the height of the stack, or chimney, as it is sometimes called, at those works?

A. I don't really remember now, but I was informed—I don't know it from any measurement that I made, but I was informed that it was somewhere in the neighborhood of 300 feet. It is in that neighborhood; I have never measured it.

Q. 14. When did you make that examination, Professor Price?

A. Well, really I could not name the day at the present time. I should think it must be sometime over nine months ago.

Q. 15. At whose request did you make it?

A. At the request of Mr. Ellert.

Q. 16. Mr. Ellert, the president of the corporation?

A. Yes, sir.

Q. 17. What was the result of your examination?

503 A. The result was that during the few hours that I was there and viewing the material that had been thrown in, that there was a very complete combustion of all of the organic substances that were thrown in there, paper and offal of various kinds from these restaurants; and I was perfectly astonished at the completeness of the combustion without the addition of fuel outside of it.

Q. 18. Is the heat very intense there?

A. The heat is exceedingly intense, so intense, you know, that all the material that is not capable of combustion is absolutely fused into a mass of clinkers just as hot as any fire that is burned under

any ordinary boiler; and in fact, more so. It is similar to any clinker that is formed under a forced draught.

Q. 19. What is the occasion of the completeness of the combustion of it?

A. From the organic substances that are being burned, that are present in the material that is brought there.

Q. 20. And what is the occasion of the intense heat?

A. Burning up of the paper and the wood and other organic substances.

Q. 21. As to the height of the chimney, has the height of the chimney anything to do with it?

A. Of course, you can't do anything without a sufficient quantity of air, or a sufficient quantity of oxygen to support combustion.

504 Q. 22. Has the height of the chimney anything to do with it?

A. The extreme height of the chimney of course increases the draught.

Q. 23. Now, taking these factors, Professor, what is your opinion as to their being any residuum which would be obnoxious to health or comfort emanating from that stack, or from that chimney?

A. I have come to the conclusion after this examination that I made there, that all the organic substances that may be considered deleterious which would be evolved as soon as the combustion was complete, underwent a thorough combustion; and further than that, prior to this investigation I may state that I made a very complete investigation, analysis, etc., the residuum resulting from combustion of the material, and I found that material to be nothing but hard, solid clinker and almost absolutely free from any charred material in the shape of charred coal, etc., which would be the result of incomplete combustion. The material is composed of nothing in the world but absolutely inorganic substances. This was not from one examination but from several. Of course I investigated several times in the manner that I have stated.

Q. 24. Now, in the course of your examination, have you formed any opinion as to what constituted the vapor that emanated from that chimney after this complete combustion?

A. No, I made no analysis of the gases emanating from it,

505 but judging from the appearance of it and there being nothing but perfectly white vapor discharged, that a large quantity of water was being evaporated, and not only evaporated, but also that the decomposition of inorganic matter would produce a large volume of water; but judging from the appearances of it, I should judge that that was a complete operation, that the combustion was absolute.

Q. 25. Now, with whatever matter, whether it be steam or carbonic acid gas, or whatever it might be that emanated from the top of that smokestack, or that stack at that height, would it have any

deleterious effect upon either health or comfort in that neighborhood?

A. No, sir, because the result of this combustion would be primarily steam and carbonic acid gas, probably small quantities of carbonic oxide, being discharged at this height above all the inhabitants, why it would obey the usual law of being diffused.

Q. 26. Diffused in the atmosphere?

A. Following the well-known law of diffusion.

Cross-examination.

(By Mr. LEAMING:)

X Q. 1. Are you familiar with the patent under which this crematory was constructed?

A. No, sir, I am not. I have never read the patent.

X Q. 2. Are you familiar with the general plans of the crematory, that is, so far as the plans affect the methods of its operation?

506 A. Only so far as I witnessed the practice and operation of incinerating or burning the material.

X Q. 3. Have you observed that the crematory was so constructed that the flues from the furnaces where the organic substances were consumed passed over a bed of a coke furnace before passing into the smokestack or chimney?

A. No, I did not. My attention was not called to that at all. I just simply witnessed the operation of the combustion.

X Q. 4. You were not aware then that by the plans under which the crematory was constructed, it is designed that the smell and gases that arise from the material as it is being consumed are to pass through a flue, to and over a live fire or furnace of coke before passing into the chimney proper?

A. No, sir, my attention was not called to that.

X Q. 5. You simply observed the furnaces that were consuming the garbage, and noticed the apparent amount of combustion, and the degree of combustion, and observed the cinders and also observed the smoke or steam that came from the smokestack after combustion.

A. Yes, sir.

X Q. 6. Did you make any chemical test of the vapors that passed from the articles being consumed?

A. No, sir. Do you mean to say after final combustion?

X Q. 7. Yes, sir.

A. No.

507 X Q. 8. You made no test of the smoke or steam that comes from the smokestack?

A. No, sir.

X Q. 9. Did you make any chemical test of the cinders or residuum to ascertain whether it contained any organic substance?

A. Yes, sir.

X Q. 10. You made a chemical test of it?

A. Yes, I made an investigation.

X Q. 11. Did you make a chemical test?

A. Yes, several.

X Q. 12. To what extent, to what class?

A. I made a complete quantitative analysis of the residuum of the burning.

X Q. 13. This material that is burned in these furnaces consists of the general garbage of the city, as you understand it?

A. Yes, the general garbage of the city, just as I saw it before it was delivered. I paid particular attention to the material that was being delivered.

X Q. 14. Some of it dry and some of it wet?

A. I presume some of it was partially dry and some of it was partially wet, sloppy.

X Q. 15. As a rule it contains considerable moisture?

A. Yes, sir.

X Q. 16. And these substances are consumed in the furnaces, and no artificial fuel is used save the substances that are being consumed?

A. No, no fuel at all.

X Q. 17. In other words, the garbage makes its own fire.

A. Makes its own fuel.

X Q. 18. And as the furnaces are burning, consuming the
508 garbage, the garbage is thrown in from above, which in turn affords additional fuel?

A. Yes, sir.

X Q. 19. Is that correct?

A. That is correct. The material is thrown right in on top of the other live fire. Of course there is quite a bed on top of the live fire, of material under process, we may say, of drying; just as the ashes or clinkers are thrown out this material falls in and is consumed.

X Q. 20. Now, Doctor, when a quantity of wet garbage is thrown in upon the fire of the burning garbage it will necessarily dry out before it will burn?

A. Yes, of course it will dry out before it will burn. It will get rid of the surplus moisture.

X Q. 21. So that when a wet load of garbage is thrown in upon the furnaces the first necessary process is the drying out or expelling of the moisture contained in that garbage so thrown in?

A. Yes.

X Q. 22. And it can't burn until that moisture is driven out?

A. Well, it can't burn freely. Of course, it can burn with the existence of water.

X Q. 23. Such parts as are moist will not burn until the moisture is expelled?

A. Oh, no, they will burn with it. For instance, I want to illustrate so that it will be understood.

X Q. 24. You may do so now.

A. You just take lignite coal, that is the ordinary coal of this

coast, Mount Diablo, and all the coal that comes from Oregon
509 and some that comes from Washington. That contains any way from ten to fifteen per cent. of water the moment you throw it on, but it is a chemical water and it burns instantly, and so it is that vegetables and things of that kind that carry moisture—grease and oils, etc.—they take fire immediately, notwithstanding that they hold water.

X Q. 25. But the parts will not burn that are charged with moisture until the moisture is first driven out?

A. Well, it don't burn freely.

X Q. 26. Will a substance burn at all while wet?

A. Certainly it will.

X Q. 27. Must not the moisture be expelled before burning?

A. No, sir, that is not at all necessary.

X Q. 28. Will water burn?

A. Under certain conditions.

X Q. 29. What conditions?

A. Get it at a sufficiently high temperature.

X Q. 30. What temperature?

A. A white heat.

X Q. 31. Will it burn under those conditions?

A. Yes, because it is decomposed in the presence of carbon. When you bring carbonaceous material into contact with heated material, red hot material, why the steam that is produced in the burning will decompose, producing hydrogen and oxygen, producing I should say, hydrogen and carbonic oxide. That is the very theory upon which the gas that is used in San Francisco is made, by passing steam over red hot coal.

510 X Q. 32. I understand that, but now we are getting from the point.

A. That is precisely the same, getting the carbonaceous material and steam at a fully red hot heat and that brings about the decomposition of the water, producing hydrogen, carbonic oxide and carbonic acid, notwithstanding that there is water present.

X Q. 33. But, Doctor, in depositing wet garbage upon a fire such as you have seen in the works of this crematory, much of the water and moisture will be expelled in the form of steam, will it not?

A. Certainly it will. It carries a large quantity.

X Q. 34. But after this is expelled combustion takes place.

A. It is pretty well dried before it reaches the combustion point.

X Q. 35. Now, will not many gases be driven off with that steam during the drying process?

A. Certainly there will.

X Q. 36. What will become of those gases?

A. Those gases will pass out into the open air unless they should come in contact with the highly heated material such as you have just described to me, a bed of live burning coke. They are there undergoing decomposition and going into their ultimate constituents, hyrdogen, carbonic acid and nitrogen. That is all that can

escape into the air, taking it for granted that what you have told me is the case.

511 X Q. 37. I will ask have you ever made any study of the mechanism of other crematories.

A. No, sir.

X Q. 38. I refer to the crematories that are used in other places.

A. Not from my own personal observation. I have continuously kept in touch so far as the literature on the subject and the municipal associations, etc., are concerned; I keep in touch with what they are doing so I know that. This is the only personal experience I have had with crematories.

X Q. 39. Then you are probably aware, Doctor, that in other crematories the system used is to have the gases and smoke that arise from the burning substance pass over or by metal or brick heated to an extreme heat, a white heat, for the purpose of consuming those gases and the smell?

A. Yes, I know from my reading.

X Q. 40. You are aware that this is the system usually used?

A. I know that this system is used.

X Q. 41. If the gases, smoke and vapor that arise from the burning material are brought in contact with that white heated surface, they will operate to consume such gases in the same manner that you say steam will be consumed in the answer you gave a few moments ago?

A. Yes, but I think, however, from the description as given me, to pass it through and over a mass of ignited coke, that that would be superior to its passing through a heated furnace.

X Q. 42. Then you understand that if these gases and smoke that arise from the burning garbage should be passed over a live

512 bed of coke, or a furnace of coke, before passing into the smokestack, that that would be equally as effective in the destruction of the gases and vapors as a metal raised to a white heat?

A. Infinitely superior.

X Q. 43. You think it would be superior?

A. Yes, for this reason——

X Q. 44. (Interrupting.) You think that would be much more effective in your judgment.

A. Much more effective.

X Q. 45. But if a large quantity of wet garbage were thrown upon the furnace which was heated to a great heat in the consumption of the garbage, there would necessarily arise steam vapor and gas to a greater or less degree before decomposition took place?

A. Yes, sir.

X Q. 46. Those gases would pass up the chimney unless they were destroyed by the coke furnaces referred to, or some other artificial mechanism for that purpose.

A. Yes, sir.

X Q. 47. They would pass into the atmosphere above and be dissipated after leaving the smokestack?

A. Not necessarily.

513 X Q. 48. I understood you to say so.

A. No, not necessarily. They would escape of course as gases, but escape just simply in the act of drying the garbage. They would volatilize at a very low temperature; consequently I take it for granted that that chimney would be cold, and they would recondense, because they are only vapors for the time being. They are carried along by the steam, and when they pass through a long flue and get cold—through a long chimney and get cold, why they would recondense back again into liquids.

X Q. 49. To such an extent as to make any considerable discharge of the liquid?

A. Well, of course in proportion to the gases that would be evolved. Nothing but an experiment could prove that, taking the gases before they enter the chimney——

X Q. 50. (Interrupting.) Then you would not be able to state whether the gases would necessarily condense in the chimney as a condensor, or whether some of them would escape from the top.

A. There would be very little escape of these gases that would evolve at low temperature.

X Q. 51. Could you be prepared to state that none of them could escape?

A. No, I could not state that none of them could escape.

X Q. 52. There are many gases that are quite as light as air, are there not?

514 A. Well, lightness has nothing to do with it. It is the condensing point, not lightness. Lightness has nothing at all to do with the condensation of gas.

X Q. 53. Would the gases in passing up a smokestack necessarily come in contact with the sides of the smokestack so that there would be condensation?

A. Yes, sir, they would condense. All those gases that are evolved at a low temperature would condense.

X Q. 54. What about gases at a high temperature?

A. Well, the gases at a high temperature would be very simple. They would be merely carbonic acid, carbonic oxide and nitrogen.

X Q. 55. Then they would be less likely to condense?

A. They would not condense.

X Q. 56. They would pass up in the smokestack and go out into the atmosphere?

A. They would pass up the smokestack and go out into the atmosphere, but they are of the same composition as is the combustion of all fuel, just as simple; nitrogen, steam, carbonic acid and carbonic oxide; precisely the same in nature.

X Q. 57. Supposing a substance is of a putrid nature, spoiled, are there any gases that would pass from that if these gases were permitted to pass from it, that would be of a poisonous nature?

A. I would have to ask you a question there. What putrid gases

have you reference to? There would be no putrid gases. I will tell you now, all the gases that could possibly——

515 X Q. 57. (Interrupting.) I am not speaking of putrid gases, I am speaking of putrid substances.

A. Do you mean after combustion of before?

X Q. 59. I am asking if any poisonous gases would pass from a putrid substance that was being oxidized, or consumed, if those gases were allowed to pass from it without being consumed. Do you understand the question?

A. Before I could really give you an intelligent answer to that question of yours, because your question premises a certain fact, namely, that there are putrid gases evolved, now, then, before I can answer that you must tell me what those putrid gases are. Then I can simply tell you whether those putrid gases would condense and at what temperature they would condense, before I would answer it. But if you will permit me to finish. Knowing just exactly as near as possible, from my knowledge of the combustion of various material, the gases that could possibly evolve from a fire that would be just sufficient, upon the deposition of the material, to simply dry that material, a heat that would be not much above the boiling point, not much above 200 or 300 degrees, which is below the combustion point, there would be gases given off such as sulphuretted hydrogen, bi-sulphide of carbon, and probably some of the gen, bi-sulphide of carbon and probably some of the cyanogen gases, those gases with ammonia, also. Those gases would go up the smokestack with the steam, which would also be condensing, and those gases would

516 all dissolve and would not go to the air. They are not permanent gases, they are only volatile on account of the temperature, and they are all condensible below the boiling point of water.

X Q. 60. Have you finished?

A. Yes, sir.

X Q. 61. Suppose that putrid substances are burned in an open atmosphere, will they emit gases that are poisonous?

A. No, sir.

X Q. 62. They will not?

A. No, sir.

X Q. 63. It is not detrimental to health to destroy putrid substances in the open atmosphere?

A. No, sir, upon the following conditions, that the combustion is complete.

X Q. 64. Would the combustion be complete without artificial process in the open air, the open air supplying all the oxygen?

A. If the open air would supply all the oxygen, which is a condition necessary for complete combustion?

X Q. 65. But in the case of incomplete combustion in the open atmosphere, of a putrid substance, the gases emitted would be poisonous, would they not?

A. Well, it depends upon circumstances, what are volatilizing. Prussic acid of course would be poisonous if such a compound as

that could produce prussic acid. But as I told you, these are ingredients that are evolved at even partial combustion. They are simply water, ammonia, sulphuretted hydrogen, bi-sulphide or carbon; the latter in very small quantities. Neither of these gases could be said to be exceedingly poisonous when deposited
517 in the air, because they would condense and they could not exist in the air.

X Q. 66. Now, Doctor, supposing the attendant at the furnace should allow the fire to smoulder to such an extent that the burning garbage in the furnace was at a much less heat than it was at the time you saw it; in other words, supposing the fire should be allowed to become very much less intense, so that when the additional garbage was thrown in the result would be that of smouldering for a considerable time. In such a case would the gases find their way out of the smokestack?

A. Yes, sir, they would; burning the quantities that they have there with an incomplete combustion, why, of course, very offensive and disagreeable gases would evolve.

X Q. 67. Is there any gas that you know of in all of your experience that is more offensive than sulph-retted hydrogen?

A. No.

X Q. 68. It is generally recognized as the most stinking thing in the world, is it not?

A. If you call rotten eggs the worst thing, you have got it. All I can say is that I am in it every day.

X Q. 69. And in the case of incomplete combustion that would be occasioned by the fires being allowed to smoulder by wet garbage being thrown in on top, sulphuretted hydrogen to a considerable extent would necessarily pass out of the smokestack?

A. Yes, the same as it would with limited combustion.

518 X Q. 70. And your testimony as to the fact that gases do not pass out of the smokestack was predicated upon the conditions as you saw them, which were, as you understood it, complete combustion?

A. Yes, sir.

X Q. 71. That is correct, is it?

A. That is correct.

X Q. 72. And your testimony would not be the same as to conditions that were of the character I have just named, namely, where the fire was allowed to smoulder.

A. Excepting as to its poisonous nature. It would be exceedingly offensive, just the same as it would be if you burned a lot of leather, a very offensive odor, but nothing deleterious to health.

— Q. 73. You think in the case of a smouldering fire, the result would be an offensive gas, but not a poisonous gas?

A. An offensive gas, but not a poisonous gas, for the reason that those gases, if they escape condensation, would simply condense immediately in the air, and would not be diffused any great distance.

X Q. 74. Now, assuming that there was not complete combustion as the gases pass from the smokestack into the atmosphere, they would settle to the ground if it was what is commonly called a muggy day would they not?

A. Yes, sir, anything that was condensible, that had escaped condensation, the moisture of the air in the form of fog would meet it and it would have a tendency to condense and would condense.

519 — Q. 75. And it would be recognized on the surface of the earth as a bad smell?

A. Well, I don't know about the surface of the earth. Probably it would be recognized in the breathing of it. If it came in contact with the earth it would be very apt to be absorbed.

X Q. 76. It would be recognized by the people on the surface of the ea-th as a bad smell, would it not?

A. It would be recognized by the people on the surface of the earth as a bad smell, yes, sir.

Redirect examination.

(By Mr. PIERSON:)

R. Q. 1. How far off, Professor, could that effect be detected? Take a smokestack 265 feet high and emitting sulphuretted hydrogen under those circumstances?

A. Well, with the conditions that I have seen there, and the volume of steam that is continually emitted there, I have come to the conclusion that very little sulphuretted hydrogen could escape. It would be dissolved, or condensed, rather.

Examination-in-chief of Dr. JOHN M. WILLIAMSON, a witness called on behalf of complainant, sworn.

(By Mr. PIERSON:)

Q. 1. Where do you reside?

A. 301 Devisadero street.

Q. 2. How long have you lived there, Doctor?

A. At that particular place, about four years.

520 Q. 3. How long have you lived in San Francisco?

A. About sixteen years.

Q. 4. And your profession?

A. Physician and surgeon.

Q. 5. Has your profession for the last four years been the same?

A. Yes, sir.

Q. 6. Do you hold any official position in San Francisco?

A. Yes.

Q. 7. What position?

A. I am a member of the board of health of the city and county of San Francisco.

Q. 8. How long have you been a member of the board, Doctor?

A. Nearly four years.

Q. 9. Who compose the board with you?

A. At the present time, Dr. G. J. Fitzgibbon, Dr. Louis Bazet and Dr. R. W. Baum.

Q. 10. Dr. Baum, yourself and Dr. Fitzgibbon made an affidavit in this matter which was submitted on the question of injunction, I think, did you not?

A. Yes, I recollect signing an affidavit.

Q. 11. Now, Doctor, do you know the premises occupied by the Sanitary Reduction Works?

A. Yes, sir.

Q. 12. Have you ever visited them?

A. Yes, sir.

Q. 13. How many times?

A. Oh, I could not say exactly; probably three or four times.

Q. 14. During what times have you visited them? When was your first visit?

521 A. My first visit was on the occasion of the placing of the cornerstone.

Q. 15. By the mayor?

A. By the mayor, yes, sir. After that I visited the works in conjunction of some of the other members of the board. The personnel of the board at the time of the first visit was different from that of the present time. Dr. Morse, who has since died, was a member, and Dr. Hart, who since resigned, was also a member. Dr. Bazet and Dr. Baum were not members at that time.

Q. 16. Your second visit was an official one, I should judge?

A. That I have forgotten. Some member of the board was with me, but I can't recollect.

Q. 17. And was about what time? How long after the cornerstone was laid?

A. I think that the works were in complete operation.

Q. 18. How long? A month or two or three or four?

A. It took longer than that to build the works, I think, Mr. Pierson.

Q. 19. How many months after they were in complete operation did you make your second visit?

A. That I could not say. The works had just commenced to burn garbage. This second visit was after the works were in operation.

Q. 20. Did you make this visit in company with your comembers of the board?

A. I was not alone. I was in company with some other
522 member of the board. I have no recollection which particular member. It may have been Dr. Morse. I am not sure. The first visit was made with the board as a whole, with probably one exception.

Q. 21. What was the purpose of those visits, Doctor?

A. We were in receipt of a communication—that is the first visit—

and when I say the first visit, I eliminate the visit that was made at the time the cornerstone was laid. The purpose of the first visit after that was in response to a communication or an invitation that had been received from the directors of the institution asking that we should inspect the works. And in response to that we made the inspection.

Q. 22. How thorough was that inspection?

A. Well, we saw the system of deposition of garbage, the manner in which it was dumped into the receptacles, and we descended to the lower floor and had the furnaces opened for our inspection. We saw the manner in which the mass of garbage was deposited, and we also examined the detritus that came away from the furnaces, the quality of it and the consistency of it. That would about comprise the extent.

Q. 23. Would you regard it as a thorough examination or otherwise?

A. I would call it a fairly thorough examination, for a man not engaged in the practice of chemistry.

Q. 24. You think it was a fairly thorough examination?

523 A. For an ordinary sanitary inspection I would call it a fairly thorough examination.

Q. 25. Now, the purpose of your next visit, what was that?

A. That was merely to reinforce the opinions, or to reinforce the information we had gained on the first visit.

Q. 26. How long ago was your last visit?

A. It must be a matter of a year and a half ago.

Q. 27. Now, from those various examinations that you have made in your official capacity as a member of the board of health, did you form any opinion or judgment as to whether those works in any sense constituted a nuisance?

A. As to whether what?

Q. 28. They constituted a nuisance?

A. I didn't consider that they constituted a nuisance.

Q. 29. In your practice as a physician have you any patients in the neighborhood of those works? Have you ever had?

A. I have had patients in the vicinity of the works.

Q. 30. Have you ever been able in the examination of your patients to attribute any illness they have had to the operation of those works?

A. No, sir.

Q. 31. Have you ever heard any complaint from anyone as to the works themselves constituting a nuisance?

A. Not to me as a physician. Certain complaints have come in to us officially, in the health department.

Q. 32. Who made those complaints?

A. To the health department?

Q. 33. Yes.

524 A. Well, there were several that came in. The most notable one of those complaints was from some gentleman, I

have forgotten his name, who claimed that he had a son who contracted typhoid fever from inhaling the fumes from the crematory, and he either quoted from the statement of a physician or submitted the statement of a physician in corroboration of his assertion. I remember further that we looked up the name of the physician and we didn't find him in the directory at all. So we came to the conclusion that there was no foundation to that particular portion of the complaint which included the name of the physician.

Q. 34. Would you recollect the name of that complainant if I gave it to you, do you think?

A. I am not positive about that.

Q. 35. Was it Vetter?

A. That I could not say.

Q. 36. You don't recollect?

A. I am not positive as to that.

Q. 37. Does your duty as a member of the board of health require you to see to the sanitary condition of institutions in San Francisco, to see that they do not violate the laws of health?

A. Yes, sir.

Q. 38. And these visits were made for the purpose of examining this particular institution?

A. They were.

525 Cross-examination.

(By Mr. LEAMING:)

Q. 1. You visited the crematory three times, I understand?

A. Yes, to the best of my recollection.

Q. 2. Was it in operation the first time you saw it? Was it actually being operated?

A. Well, the first time, as I stated, was on the occasion of the laying of the cornerstone. I eliminated that from my official visits.

Q. 3. Then you have visited it twice since it has been in operation?

A. I visited it twice since it has been in operation.

Q. 4. Do you recollect whether it was being operated on each occasion?

A. Yes, it was being operated on each occasion.

Q. 5. Did you on either of these occasions examine the details of mechanism of the works?

A. Well, I could not say that I examined the detailed mechanism. We were escorted about, I remember, on the occasion of our first visit, by the president, Mr. Ellert, and by the constructing engineer, and my knowledge of the mechanism was of course based upon his statement as to the intricate parts of the mechanism.

Q. 6. Can you tell me whether on either of those visits what was known as the coke incinerating furnaces were in operation at that time?

A. I heard nothing of the coke incinerating furnaces.

Q. 7. Do you know what coke incinerating furnaces are in connection with the works of a crematory?

526 A. No, I do not.

Q. 8. Do you know the system of flues for the purpose of the destruction of any gases that arise?

A. I have been shown drafts, of course, of this crematory and other crematories, but I am not sufficiently familiar with the details to judge.

Q. 9. You don't know whether when you were there they were operating coke furnaces or not?

A. No, I heard nothing of them, so I presume they were not operating them.

Q. 10. What patients have you had in the vicinity of the crematory?

A. Oh, they have been scattered about.

Q. 11. Can you name one and give his residence?

A. I remember having one over—the cars go down 16th street and they go past the crematory, then they turn to the west, I believe, no, to the south, then they go up a hill and down toward the Union iron works. I remember having a patient up on the hill there, but I don't remember the name of the street.

Q. 12. How far was that from the crematory?

A. It must have been seven or eight blocks from there. I made no measurements.

Q. 13. What direction from the crematory?

A. My geography gets somewhat mixed when I go off in that part of the city. I should judge it was east from the crematory, east or southeast.

Q. 14. What were you called for in regard to that patient?

527 A. That particular patient had a liver that was somewhat congested from over-indulgence in stimulants.

Q. 15. He had no trouble from any disease contracted there from inhalation of the crematory gases?

A. No, you could not attribute it to that. I have had them at places along on Folsom street and Harrison streets, in close proximity to the crematory.

Q. 16. Do you remember a complaint filed before your board by Reuben Lloyd, a lawyer of this city?

A. Yes, sir.

Q. 17. So far as you are able to say on the two occasions that you refer to, the crematory was being operated in a sanitary manner?

A. Yes, sir. That was my impression.

Redirect examination.

(By Mr. PIERSON:)

R. Q. 1. Did you make an investigation based upon the complaint of Reuben H. Lloyd?

A. I think the matter was left to the health officer.

R. Q. 2. Did he report to your board?

A. He reported back to the board. I think that he had made some inquiries from persons in the vicinity concerning which Mr. Lloyd spoke of in his communication, and that there was not sufficient ground to the complaint for the board to take any action. That was my impression; of course the official records of the office would show.

528 Recross-examination.

(By Mr. LEAMING:)

R. X Q. 1. Doctor, are you entirely clear about that?

A. I think in the main I am.

R. X Q. 2. Is not this the fact: That upon the complaint of Reuben Lloyd a report was made by the board calling the attention of Mr. Ellert, as president of the Sanitary Reduction Works, to the complaint, and that in response to that Mr. Ellert promised to make additions or changes or improvements in the smokestack in the crematory by placing in it and on it what is known as smoke consumers?

A. I know that there was a communication from the board to Mr. Ellert in the matter of a smoke consumer. Whether that followed closely upon Mr. Lloyd's communication, I would not be positive.

R. X Q. 3. Don't you know that Mr. Ellert, as president of the crematory, promised to make the changes that I referred to in my last question, in the smokestack of the crematory?

A. I know that there was a communication from Mr. Ellert to that effect.

R. X Q. 4. Do you know whether it has been done?

A. I could not say.

R. X Q. 5. Do you know how long ago it was that that promise was made?

A. I could not be positive.

R. X Q. 6. Do you know how long ago it was that the complaint of Reuben Lloyd was made?

529 A. That I could not say.

R. X Q. 6. Do you know whether a smokestack has been put up on it?

A. No, sir, I do not.

Examination of L. R. ELLERT, recalled on behalf of complainant.

(By Mr. PIERSON:)

Q. 1. What is the height above the ground of the smokestack of the Sanitary Reduction Works?

A. Two hundred and fifty feet.

Q. 2. Does that come to the top of the chimney?

A. Yes, probably a little more. There are 250 feet of bricks.

Then of course on top of that is what is called the cap. I think that is five feet or so.

Mr. PIERSON: I offer in evidence this memorandum, being one that was testified to by the witness Long, and ask to have it marked Complainant's Exhibit "H."

(Marked Complainant's Exhibit "H.")

Cross-examination.

(By Mr. LEAMING:)

R Q. 1. I will ask you whether a smoke consumer has in fact been placed upon the chimney of the crematory, or not, as yet?

A. No, we have been experimenting for some months.

X Q. 2. No smoke consumer has yet been placed upon it?

A. No, because we have not found one that will be suitable for that character of smoke.

530 (By Mr. PIERSON:)

X Q. 3. I will ask you if you have been negotiating with various people with the view to putting up a smoke consumer?

A. Yes, sir, with four or five of them, ever since we have been notified by the board of health; in fact, before.

Further hearing adjourned to Saturday, May 27, 1899, at 10 a. m.

SATURDAY, May 27, 1899—10 a. m.

Counsel Appearing.

For complainant, W. M. Pierson, Esq.
For respondents, E. B. Leaming, Esq.

Examination-in-chief of Dr. J. A. SIMPSON, a witness called on behalf of complainants, sworn.

(By Mr. PIERSON:)

Q. 1. Doctor, your full name is what?
A. Josiah Adams Simpson.
Q. 2. Where do you reside, Doctor?
A. 612 20th street, corner of Kentucky.
Q. 3. In this city and county?
A. Yes, sir.
Q. 4. How long have you lived there?
A. I have lived there at that corner nearly three years.
Q. 5. You are a regular licensed practicing physician in this county?
A. Yes, sir.
Q. 6. From what college or university did you graduate?
531 A. The Cooper medical college in this city.
Q. 7. How long have you practiced medicine in this city, Doctor?

A. About seven years and a half.

Q. 8. Do you know the works of the complainant herein, The Sanitary Reduction Works of San Francisco?

A. Yes, sir, I have been through them.

Q. 9. More than once?

A. Only on one occasion, I believe.

Q. 10. How long since?

A. That was perhaps four or five months ago, how long I don't exactly know.

Q. 11. In what direction is the Sanitary Reduction Works from your residence?

A. In a somewhat southwestern direction.

Q. 12. And in a straight line, an air line, how far approximately.

A. Perhaps a mile; from three-quarters of a mile; somewhere along there; I don't know exactly the distance.

Q. 13. Do you know where what is called the Potrero is situated in this county?

A. Yes, sir.

Q. 14. Have you any patients, Doctor, residing in the vicinity of the Sanitary Reduction Works?

A. That is where my practice chiefly is, in that vicinity.

Q. 15. Have you a number of patients in that vicinity?

A. I have.

Q. 16. In the immediate vicinity of the reduction works, say within a radius of a quarter of a mile, is there much population?

532

A. A very little.

Q. 16. Sparsely settled?

A. Yes, sir.

Q. 17. Are there any factories down there other than the Sanitary Reduction Works?

A. There are others.

Q. 18. In the immediate vicinity of the works?

A. Yes, sir.

Q. 19. Since the Sanitary Reduction Works have been in operation, say from November, 1896, to the present time, have you ever heard any complaints from your patients or others as to the Sanitary Reduction Works being a nuisance?

A. I don't think so; that is, not to amount to anything.

Q. 20. In your treatment of patients in that vicinity have you had reason or occasion to attribute illness to the Sanitary Reduction Works?

A. I have not.

Q. 21. How frequently, Doctor, say since November, 1896, have you passed in the vicinity of those works?

A. Well, I have passed very often; I could not say how often.

Q. 22. On an average once a week?

A. I should say perhaps oftener.

Q. 23. In passing the vicinity of those works have you or not experienced any discomfort from the smoke issuing from those works?

A. Almost never. I have, perhaps, detected on one or two occasions a slight odor.

533 Q. 24. Do you recollect the time when the garbage and refuse matter of the city was dumped in the vicinity of the works upon what is known as the dumps?

A. I do.

Q. 25. How far away from the present reduction works of the Sanitary Reduction Company were those dumps?

A. Well, they varied. They, of course, covered a considerable area of ground, I should judge over a radius of from half to three quarters of a mile; maybe not so much.

Q. 26. Was there or not any offensive odor arising from these dumps?

A. There was a very offensive odor.

Mr. LEAMING: Attorney for respondents objects to any testimony relating to the conditions that prevailed prior to the erection of the works at the Sanitary Reduction Works of San Francisco, upon the ground that it is incompetent, irrelevant and immaterial and in no way tends to affect any of the issues of this case.

(By Mr. PIERSON:)

Q. 27. Do you know, Doctor, whether the location and operation of the Sanitary Reduction Works has had any effect upon the value of real estate in the vicinity of them?

A. I have not had any dealings in real estate myself, and consequently I don't know in regard to that, though I have heard no complaints.

Q. 28. You cannot speak of your own knowledge?

534 A. No, I can not.

Q. 29. Do you know of your own knowledge whether the property in the vicinity of the works has or has not been rendered more desirable for residence purposes by reason of the construction and operation of the works?

Mr. LEAMING: We object to that question upon the ground that the general question of desirability cannot be embodied in a question of that character. If counsel will direct his questions to any specific features that may be answered directly, it might be competent, but not otherwise. I therefore object to the question upon that ground. I further object to it upon the ground that it is immaterial to the issues in this case.

A. Yes, I think so.

Cross-examination:

(By Mr. LEAMING:)

X Q. 1. I understood you to say, Doctor, that you had heard some complaints, but that the complaints that you had heard you didn't consider amounted to much.

A. I don't know as I have heard of any real complaint. Some may have spoken of an odor from it, but no one has made any serious complaint, to my knowledge.

X Q. 2. Then no one has complained to you that they suffered physically from it, is that what you mean?

A. No. I have no recollection of any such complaint.

X Q. 3. But you have heard the matter complained of, that there was an odor?

A. Very seldom.

535 X Q. 4. You have at times?

A. Well, I can't say that I positively have. It is possible that some one may have remarked of the matter a few times in my hearing, but I have no distinct recollection of anything of the kind.

X Q. 5. You recognize it as a fact, do you not, that when the atmosphere is heavy and quiet, what we call a muggy day, that in the vicinity of the crematory there is a bad smell?

A. I don't remember of having noticed that.

X Q. 6. You never have passed when the conditions were such that you have observed any smell?

A. Well, I have detected a slight smell on a few occasions, a very slight. It has not been sufficient really, to amount to much as it seemed to me.

Re-direct examination.

(By Mr. PIERSON:)

R. D. Q. 1. Doctor, in detecting the smell that you refer to, could you say whether it proceeded from the Sanitary Reduction Works chimney or from other factories in that neighborhood?

A. Well, I could not say exactly in that matter. I rather attribute it to that.

Mr. PIERSON: Complainant now offers in evidence the judgment roll in the case of L. V. Merle *vs.* the Board of Supervisors of the city of San Francisco; register number 64,952; consisting of com-

536 plaint filed in said action April 23, 1896, the answer of the Board of Supervisors filed May 15, 1896; alternative writ of mandate filed June 14, 1896; decree dated June 23, 1896; and recorded June 25, 1896; findings filed June 23, 1896; complaint of F. E. Sharon in intervention filed September 3, 1896; answer thereto of L. V. Merle filed September 7, 1896; findings filed September 11, 1896; judgment and decree rendered September 10, 1896, filed September 11, 1896, and recorded September 28, 1896.

Mr. LEAMING: Counsel for respondents objects to the introduction of the judgment-roll now offered upon the ground that the same upon its face appears to be litigation between parties who are strangers to the respondents in this case, and parties in no way related to the respondents in this case by privity of estate or blood, and that the same is for that reason incompetent to prove or affect any of the issues in this case.

(Marked Complainants' Exhibit "I.")

Examination-in-chief of GEORGE A. MERRILL, a witness called on behalf of complainant, sworn.

(By Mr. PIERSON:)

Q. 1. Your full name is what?

A. George A. Merrill.

Q. 2. Where do you reside, Mr. Merrill?

A. 324 Noe street in this city.

Q. 3. Between what streets is that?

A. Between 16th and 17th.

Q. 4. What is your occupation?

537 A. I am principal of the California School of Mechanical Arts.

Q. 5. How long have you been such?

A. Five years.

Q. 6. Where is that School of Mechanical Arts located?

A. On the block bounded by 15th, 16th, Utah and San Bruno avenue.

Q. 7. Do you know the location of the Sanitary Reduction Works of San Francisco?

A. Yes, sir.

Q. 8. In what direction from those works is this school?

A. The school is almost due west; perhaps a little south.

Q. 9. In an air line how distant?

A. About 900 feet, I should judge.

Q. 10. During the last two years or so, from November, 1896, to the present time, how many pupils have on the average attended your school?

A. Two hundred and fifty to three hundred.

Q. 11. In the main where do those pupils reside?

A. They reside all over the city; a great many in Alameda; some in Marin county.

Q. 12. Do any considerable number of them reside say within a radius of a mile from the Sanitary Reduction Works?

A. Well, some of those that live in the mission probably would live within that distance, and there are some from the south

538 of Market street that I should say reside within a mile.

Q. 13. How many days of the week is your school open?

A. Well, we run five days out of the week and we run forty-two weeks in the year.

Q. 14. Has your school been opened on those days since November, 1896?

A. Yes, sir.

Q. 15. During what hours of the day is this school open?

A. From 9 to 4:30.

Q. 16. You have been in constant attendance upon the school at all of its sessions during all of this time?

A. Yes, sir.

Q. 17. Have you ever noticed, Mr. Merrill, any offensive odors or anything prejudicial to comfort or health, in your school, which emanated from the Sanitary Reduction Works of San Francisco?

A. Well, I think on two or three occasions, all told, I have noticed an odor when the wind gets around from the east, northeast, I notice a little odor of what I should compare to burning rags.

Q. 18. Two or three times during a period of thirty months?

A. Well, from the time that the crematory commenced operations. I don't exactly remember what date that is.

539 Cross-examination.

(By Mr. LEAMING:)

X Q. 1. It is a fact, is it not, Mr. Merrill, that the wind very seldom blows from that quarter in that locality?

A. Very seldom. It prevails from the west of course, during the summer, and then during the stormy season it comes from the southeast, and then during the fall, the late fall, when we have what we call our mild weather here in California, here in San Francisco, when the wind comes from the east and there are, well perhaps, from October around to January or February, there several weeks when it comes pretty steadily from the east off and on.

X Q. 2. And on those occasions you have noticed the smell to which you refer?

A. Well, not always, no, it is only occasionally. I presume it is on those times when they dumped a hopper full of stuff in, a little wet—before it is dried sufficiently. That is only an impression. When I have noticed it I always remarked "Well, I guess they had better dry out the stuff a little bit more before they dump it," or something of that kind.

Mr. PIERSON: I will rest here with the understanding that if there should be any sur-rebuttal I will have a right to call Dr. Ellert as to one or two matters.

Mr. LEAMING: Counsel for respondents will ask the ex-
540 aminer to sit Monday morning at 10 o'clock at this place as a time when the respondents may examine the only additional witness upon behalf of the defense, for which they reserved the privilege by stipulation of counsel, and such rebuttal as they may have. I am not ready to state whether there will be any rebuttal or not.

(By stipulation between the respective counsel the reading and signing of the testimony by the several witnesses in this case are waived.)

Further hearing adjourned to Monday, May 29, 1899, at 10:30 a. m.

MONDAY, May 29, 1899—10:30 a. m.

Counsel Appearing.

For complainant, W. M. Pearson, Esq.
For respondents, no appearance.

By request of attorneys for respondents further hearing was continued until 2 p. m.

MONDAY, May 29, 1899—2 p. m.

Counsel Appearing.

For complainant, W. M. Pearson, Esq.
For respondent California Reduction Co., E. B. Leaming, Esq.
For respondents other than The California Reduction Co., Garret McEnerney, Esq., and R. T. Harding, Esq.

Further hearing adjourned to Wednesday May 31, 1899, at 11 p. m.

541 WEDNESDAY, May 31, 1899—11 a. m.

Counsel Appearing.

For complainant, W. M. Pierson, Esq.
For respondent California Reduction Co., E. B. Leaming, Esq.
For respondents other than The California Reduction Co., Garret McEnerney, Esq.

Examination-in-chief of REUBEN H. LLOYD, a witness called on behalf of respondents other than The California Reduction Co., sworn.

Mr. LEAMING: In the absence of the counsel for the other respondents, who will be here shortly. I will examine Mr. Lloyd. You will please make a note, Mr. Stenographer, that Mr. Lloyd is the witness who by stipulation we reserved the right to call as a part of our proofs in chief on behalf of the defense, upon the subject of the nuisance created by the crematory.

Mr. PIERSON: Also note, Mr. Reporter, that Mr. Lloyd was not named as the witness that was to be produced by respondents; that the arrangement made by counsel was that during the time the complainants were introducing testimony in rebuttal the respondents might introduce one witness, not naming him, on the question of nuisance; and complainants now object to any testimony from Mr.

Lloyd upon that subject, upon the ground that the same is not surrebuttal.

Mr. LEAMING: Please further note that the only reason the witness was not produced during the time complainants were taking
542 their rebuttal proofs was the fact that counsel desired to not interrupt the progress of the proofs upon the part of complainants, understanding that it would be entirely agreeable to complainants for respondents to introduce the witness when complainants were through, as the testimony of the witness is to be confined solely to the question of nuisance.

Mr. PIERSON: Well then, please to note the further memorandum to the effect that after the complainants had completed their testimony in rebuttal they agreed that counsel might examine one witness on the subject of nuisance, on Monday, the 29th day of May, at half past ten, at which time counsel for complainants was in attendance. No witness was produced here and the hearing was deferred until two o'clock, when no witness was still produced.

(By Mr. LEAMING:)

Q. 1. Now will you kindly state your name, residence and occupation or profession.

A. R. H. Lloyd, 1010 Folsom street, attorney-at-law.

Q. 2. A member of what firm of attorneys in this city?

A. Lloyd & Wood.

Q. 3. How long have you resided at the place you name as your residence?

A. About forty-five years.

Q. 4. Please state how far your residence is in a straight line, approximately, from the works of the Sanitary Reduction Works?

543 A. I could not state exactly. I should say at a guess, about 700 or 800 yards.

Q. 5. And in what direction is your property from the Sanitary Reduction Works?

A. I think in a northeasterly direction from the works.

Q. 6. By that you mean a northeasterly wind would blow from the crematory to your residence?

A. No, a southwesterly wind would blow from the crematory over to my house.

Q. 7. Are you the owner of the property where you reside?

A. Yes, sir.

Q. 8. Are you an owner of property in this city to a considerable extent?

A. I own some property here, sir.

Q. 9. Any other property in the vicinity of your residence?

A. I do.

Q. 10. Residence property?

A. Yes, sir.

Q. 11. Kindly state to the court whether or not at your residence

you suffer any inconvenience arising or emanating from the crematory; and if so, what, and its character.

(Objected to as irrelevant, immaterial and not in sur-rebuttal.)

A. I noticed great inconvenience; a number of times at night I have been wakened up by the sickening suffocating fumes coming from that place and coming in through my window to my bedroom, to such an extent that they wakened me out of sleep and I
544 had to get up and shut my room, shut up my windows and keep it out. That occurred a number of times; when the wind was blowing from the south and west it carried the smoke directly from that chimney over my house, and when the air is light it settles down like a pall over the whole place bringing the smoke and this sickening smell, disgusting smell, permeating in the air, so that you can hardly breathe.

Q. 12. State whether there are any deposits of cinders or ashes?

(The same objection.)

A. Yes, sir; pieces of burned paper and other material, cinders, drop all over my garden.

Q. 13. State whether the character of the smell and the annoyance to which you referred is of such magnitude as to interfere with the comfortable enjoyment of your property and life at that place?

(The same objection.)

A. Well, it became so bad that I concluded I would bring a suit to enjoin the further carrying on of the business, or that I would have to move from my house; I could not live there. And then the wind shifted and carried it away, luckily. Since then it has not blown that way, luckily. But it got so bad that I could not stand it.

Mr. PIERSON: Complainants decline to cross-examine the witness on the ground that the testimony is not sur-rebuttal.

545 Examination-in-chief of JOHN A. RUSSELL, a witness called on behalf of respondents, sworn.

(By Mr. MCENERNEY:)

Q. 11. What official position do you occupy in the city and county of San Francisco?

A. Clerk of the board of supervisors.

Q. 2. How long have you been clerk of the board of supervisors?

A. Over thirty years.

Q. 3. Is that the report of the committee on health and police for the meeting of November 18, 1895?

A. Yes, sir.

Mr. McENERNEY: I offer in evidence the report of the committee on health and police made to the board of supervisors November 18, 1895.

(Objected to as incompetent, irrelevant and immaterial and not sur-rebuttal, and as an attempt to attack the action of the board of supervisors in awarding the franchise described in the bill of complaint.)

(Marked "Respondents' Exhibit No. 25.")

Mr. McENERNEY: It will be admitted, will it, Mr. Pierson, that the book which I hold in my hand is the minute book of the board of supervisors, commencing with its meeting November 18, 1895, running on until and including the meeting of the board on April 13, 1896, and that the book is known in the office of the clerk of the board of supervisors as Book A. No. 55; and that pages 1 to 20, both pages inclusive, contain the records and minutes of the meeting of the board held November 18, 1895?

546 Mr. PIERSON: Yes, sir.

Mr. McENERNEY: Now I offer in evidence from those minutes the following portion thereof, commencing on page one:

"Board of supervisors, San Francisco, November 18, 1895, Monday afternoon.—The board met pursuant to adjournment. Present, Supervisors King, Scully, Benjamin, Hirsch, Dimond, Hughes, Dunker, Taylor, Morgenstern, Spreckels, Hobbs and Wagner. His honor, Mayor Sutro, presiding. The minutes of the last meeting read and approved." End of the reading on page 1. Now, then, on page 8:

"The committee on health and police by Supervisor Benjamin presented a report which was received read and on his motion adopted." Now, on page 12:

"The following resolutions were adopted: On motion of Supervisor Benjamin number 13,231, directing the clerk to advertise for proposals for the sale of a franchise conferring the right and sole privilege to cremate garbage and house refuse or to dispose of the same by some process equally effective and unobjectionable, free of all cost or charge to the city and county as specified in the provisions of the accompanying proposed order, and in accordance with an act approved March 23, 1893, said advertisement to recite the fact that the board intends awarding the franchise to the highest and best bidder, and requiring bidders to make certain statements in their bids, also directing the clerk to state in said advertisement that

547 if a franchise be awarded on a bid and the successful bidder fail to accept the same as provided in the proposed order, or fail to construct and have in operation the works required within the time agreed upon, the franchise shall become forfeited and become null and void." End of reading. Now, at page 14:

"There being no further business the board adjourned to meet Monday afternoon, November 25, 1895, at 3 o'clock. John A. Russell, clerk."

Mr. PIERSON: We make the same objection to these various entries from these minutes, and to all of them.

Mr. McENERNEY: I want to add to my offer of the minutes of November 11, the following on page 475:

"There being no further business the board adjourned to meet Monday afternoon, November 18, 1895. John A. Russell, clerk."

(The same objection.)

Q. 4. Mr. Russell, I now show you Respondents' Exhibit No. 25, in which it is stated: "Petition from A. M. Skelly for a franchise for a period of fifty years to cremate garbage, house refuse, etc. Your committee has prepared and offer an order for a franchise which is submitted for the inspection of the members of your honorable board prior to the clerk being directed by your committee, under instructions by the board, to advertise for said bids." And I ask you if that is the original reported by the committee with its report, and adopted that same day.

548 (The same objection.)

A. That is the order.

Mr. McENERNEY: I offer the order in evidence.

(The same objection.)

Q. 5. And that is the one reported by the committee on November 18, 1895, as stated in their report?

(The same objection.)

A. To the best of my knowledge it is. It can't be any other.

Mr. McENERNEY: We offer it in evidence.

(The same objection.)

(Marked "Respondents' Exhibit No. 26.")

Q. 6. Now, Mr. Russell, it is noted on page 8 of the minutes of November 18, 1895, that the committee on health and police by Supervisor Benjamin, presented a report which was received, read, and on motion adopted.

(The same objection.)

A. November 18?

Q. 7. November 18. I will ask you if this exhibit, Respondents' Exhibit 25 is the report referred to in these minutes?

A. It is.

(The same objection.)

Q. 8. Mr. Russell, is Exhibit No. 26 that you have already seen resolution No. 13,231, the passage of which is recorded page 14 of the minutes of the board of supervisors November 18, 1895?

(The same objection.)

549 A. It is. In fact, that is a bundle of the original papers of that date.

Q. 9. Mr. Russell, was resolution number 13,231 ever passed except upon November 18, 1895?

(The same objection.)

A. It could not be.

Q. 10. It was not?

(The same objection.)

A. It was not.

Q. 11. Was it advertised before November 18, 1895?

(The same objection.)

A. No, sir.

Q. 12. Was it ever approved by the mayor?

(The same objection; also on the ground that the record is the best evidence.)

A. I don't think it was, but I could not answer without referring. I have got the records here and I can answer by them. I am under the impression that it was not. (After examining.) No, sir, that did not go to the mayor.

Q. 13. Resolution 13,231 was never signed by the mayor?

(The same objection.)

A. Was never submitted to the mayor.

Q. 14. Did you subsequent to November 18, 1895, publish an invitation for sealed proposals for the franchise for the cremation of garbage?

(The same objection.)

A. Yes, sir.

550 Q. 15. Will you please produce the notice which you published.

(The same objection.)

A. Yes, sir; this is a notice dated November 26, 1895. It reads, "Franchise for the cremation of garbage for sale."

Mr. McENERNEY: I will offer that in evidence.

(The same objection.)

(Marked "Respondents' Exhibit No. 27.")

Mr. McENERNEY: I now offer in evidence from the same book, No. 125, from the proceedings of the meeting. I read under date of January 6, 1896. It is admitted that the pages of this book, commencing with 133 and ending with 156, both included, contain the minutes of the meeting of the board of supervisors held January 6, 1896?

Mr. PIERSON: Yes.

Mr. McENERNEY: I offer in evidence the following portions

"Board of supervisors," reading from page 133, "Board of supervisors, January 6, 1896, Monday afternoon.—The board of supervisors met pursuant to adjournment. Present, Supervisors King, Scully, Benjamin, Hirsch, Dimond, Hughes, Dunker, Taylor, Morgenstern, Spreckles, Hobbs and Wagner. His honor Mayor Sutro presiding. The minutes of the last meeting were read and approved." And at page 144: "Proposals for a franchise to cremate garbage, house refuse, etc., for the term of fifty years
551 were opened, read and on motion referred to the committee on health and police. There being no further business the board adjourned to meet Monday afternoon, January 13, 1896, at 2 and ½ o'clock. John A. Russell, clerk." This is at page 156.

Mr. PIERSON: We make the same objection, to both and to each of them.

Q. 16. I now deliver to you, Mr. Russell, four documents, and ask you what proposals for a franchise to cremate garbage, house refuse, etc., for the term of fifty years, were opened, read and on motion referred to the committee on health and police?

Mr. PIERSON: Objected to on the same grounds.

A. The proposals of A. M. Skelly, L. V. Merle and F. E. Sharon.

(By Mr. MCENERNEY:)

Q. 17. Were those proposals oral or in writing?

(The same objection.)

A. In writing.

Q. 18. Have you them with you?

A. I have, sir. (Producing.)

Q. 19. These are the three, are they?

(The same objection.)

A. These are the three.

Mr. MCENERNEY: I offer in evidence the proposal of A. M. Skelly, dated January 6, 1896, and I would like to have an admission, Mr. Pierson, that this document is the document which I interrogated
552 Mr. Skelly about.

Mr. PIERSON: It is admitted that this is the document about which you interrogated Mr. Skelly.

Mr. MCENERNEY: I now offer it in evidence.

(The same objection.)

(Marked "Respondents' Exhibit No. 28.")

Then I offer in evidence the bid of F. E. Sharon, dated January 6, 1896.

(The same objection.)

(Marked Respondents' Exhibit No. "29.")

I offer in evidence the Merle bid, dated January 26, 1896, including all the endorsements.

(The same objection. Marked Respondents' Exhibit No. "30.")

Q. 20. Mr. Russell, were there any other bids tendered or opened than the three bids Respondents' Exhibits 28, 29 and 30?

(The same objection.)

A. No.

Q. 21. Did a check accompany any of those bids?

(The same objection.)

A. A check accompanied each bid.

Q. 22. For what amounts?

(The same objection.)

A. F. E. Sharon, $2510; A. M. Skelly, $1105; L. V. Merle, $5500.

Q. 23. Were those checks certified checks or uncertified?

(The same objection.)

A. Certified checks.

553 Q. 24. Payable to whose order?

(The same objection.)

A. The clerk's.

Q. 25. That is, the clerk of the board of supervisors?

(The same objection.)

A. Yes, sir.

Q. 26. Upon what banks were those checks drawn?

(The same objection.)

A. Well, the Sharon check was on Wells, Fargo & Co., the Skelly check was on Wells, Fargo & Co., and the Merle check was on the Anglo-Californian.

Q. 27. Was that communication received by the board of supervisors and filed? (Showing.)

(The same objection.)

A. Yes, sir, filed January 25, 1896.

Q. 28. That is the date it was received, was it?

(The same objection.)

A. Yes sir.

Mr. McENERNEY: Now, I offer a communication of the Merchants' Association dated January 24, 1896, to the board of supervisors' signed by the Merchants' Association F. W. Dorhmann, president, and filed with the clerk January 25, 1896.

(The same objection. Marked "Respondents' Exhibit No. 31.")

Q. 29. Did the health and police committee ever report to the board upon the proposal for the franchise to cremate garbage, which

had been referred to the committee January 6, 1896? Did
554 they ever report to the board upon the matter of the bid which had been referred to the committee by the board January 6, 1896?

(The same objection.)

A. They did.

Q. 30. When?

(The same objection.)

A. On February 3, 1896.

Q. 31. What action was taken upon the report by the board?

A. This report is for February 3, 1896.

(The same objection.)

Q. 32. I will strike out that last question. I will put in the report first. Have you the report with you? (The witness produces.) This is the report?

(The same objection.)

A. This is the report, yes, sir.

Mr. McENERNEY: I desire to offer in evidence the report of the committee on health and police, dated February 3, 1896.

(The same objection. Marked "Respondents' Exhibit No. 82.")

Now, I desire to offer in evidence certain proceedings by the board of supervisors dated February 3, 1896, and would like to have you admit, Mr. Pierson, that this Book A. 55, pages 224 to 245 inclusive, contains the minutes of that meeting?

Mr. PIERSON: That is admitted.

Mr. McENERNEY: I will read from page 224:

555 "Board of supervisors, San Francisco, February 3, 1896, Monday afternoon.—The board of supervisors met pursuant to adjournment. Present, Supervisors King, Scully, Benjamin, Hirsh, Dimond, Hughes, Dunker, Taylor, Morgenstern, Spreckels, Hobin and Wagner, his honor Mayor Sutro presiding. The minutes of the last meeting were read and approved. Petitions, protests, etc., were presented, received and referred as follows." End of quotation at page 224.

Mr. PIERSON: We make the same objection.

Mr. McENERNEY: Now, on page 227:

"To the committee on health and police, petition of Merchants' Association requesting that an award of the garbage franchise be not made until said association shall have made detailed report, which will be within ten days. A. M. Skelly called attention to the bid made by him for franchise for cremating garbage, which he claims to be higher than that made by L. V. Merle, and that he is entitled to the franchise. Petition of F. E. Sharon against awarding the franchise to cremate garbage to any other than himself, as

he claims to be the highest bidder for the same, which fact appears upon the face of the bid."

Mr. PIERSON: We make the same objection to that offer.

(By Mr. MCENERNEY:)

Q. 33. Mr. Russell, is the petition of A. M. Skelly calling attention to the bid made by him for a franchise to cremate garbage, referred to at page 227 of the minutes of the meeting of the board of
556 supervisors, held February 23, 1896, "Respondents' Exhibit No. 24"?

(The same objection.)

A. Yes, sir. This is the petition filed by Mr. Skelly.

Q. 34. Is that the one referred to in the minutes which I have just read?

(The same objection.)

A. On what date did you just say?

Q. 35. February 3.

A. Yes, sir.

Q. 36. Is Exhibit No. 31, filed January 25, 1896, the petition of the Merchants' Association requesting that an award of garbage franchise be not made until said association shall have made a detailed report, which will be within ten days, referred to at page 227 of the minutes of the board of supervisors and of its meeting held February 3, 1896?

(The same objection.)

A. Sixty days.

Q. 37. Well, it is described here as ten days. Is that document, Exhibit 31, the petition referred to in the minutes of February 3, 1896?

(The same objection.)

A. I presume it is. But it says ten days in the minutes and sixty days here, "not more than sixty days."

Q. 38. You are not able to testify whether that is the document or not?

(The same objection.)

A. No, but that is the document from the Merchants' Asso-
557 ciation, filed January 25, which was referred to the committee on health and police and the report of the committee is endorsed on the communication. I can say that that is the communication.

Q. 39. I now show you a document, a protest of F. E. Sharon against the petition of the Merchants' Association, filed February 1, 1896, and ask you if that is the protest of F. E. Sharon, mentioned at page 227 of the minutes.

(The same objection.)

A. Yes sir.

Mr. McENERNEY: We offer it in evidence.

(The same objection. Marked "Respondents' Exhibit No. 33.")

I will now offer in evidence another portion of the minutes of February 3, 1896, page 243, as follows:

"Supervisor Benjamin introduced the order granting to L. V. Merle, his associates and assigns, the same right and privilege to cremate garbage, house refuse, dead animal and putrid vegetable matter and material of a like character as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same or a portion thereof into fertilizing matter and other substances free of all cost or charge to said city and county, and making certain violations of said order misdemeanor. Supervisor Dimond moved that it be laid over for one week. Discussed by him and the motion carried." End of 243.

Mr. PIERSON: We make the same objection as last stated.

558 Mr. McENERNEY: Then "There being no further business the board adjourned to meet on Monday afternoon, February 10, 1896, at 2 and ½ o'clock. John A. Russell, clerk." That is on page 245.

(The same objection.)

(By Mr. McENERNEY:)

Q. 40. Mr. Russell, can you produce the order introduced by Supervisor Benjamin, February 3, 1896, as appears at page 243 of Book A, No. 55, Minutes of the Board of Supervisors, granting to L. V. Merle a franchise?

(The same objection.)

A. Yes, this is it here. (Showing.)

Q. 41. How many sheets does it consist of?

(The same objection.)

A. One.

Mr. McENERNEY: I offer the order in evidence.

Mr. PIERSON: The same objection as last stated.

(Marked "Respondents' Exhibit No. 34.")

Mr. McENERNEY: I now offer in evidence the portion of the minutes of the meeting of February 10, 1896, and ask an admission that the minutes of that meeting commencing on page 246 and ending on page 267 of this book are the minutes of the board.

Mr. PIERSON: Yes.

Mr. McENERNEY: I read as follows from page 246:

"Board of supervisors, San Francisco, February 10, 1896, Monday afternoon.—The board of supervisors met pursuant to
559 adjournment. Present, Supervisors, King, Scully, Benjamin, Hirsch, Dimond, Dunker, Taylor, Morgenstern, Spreckels, Hobbs and Wagner. His honor Mayor Sutro being absent Supervisor Taylor was called to the chair. The minutes of the last meeting were read and approved." Now, on page 255: "The order laid over at a prior meeting, granting to L. V. Merle, his associates and assigns the same right and privilege to cremate garbage, house refuse, dead animal and putrid vegetable matter, and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same or a portion thereof into fertilizing matter and other substances free of all cost or charge to said city and county, and making certain violations of said order misdemeanors, was taken up, and on motion of Supervisor King again laid over for one week." On page 267: "On motion the board adjourned to meet on Monday afternoon February 17, 1896, at 2 and ½ o'clock. John A. Russell, clerk."

Mr. PIERSON: We make the same objection.

Mr. MCENERNEY: I now offer in evidence a portion of the minutes of the meeting of the board of supervisors of date February 17, 1896, and ask an admission that the minutes of the board commencing on page 268 and running over to and including page 267 as recorded in this book are the official record of the board of supervisors.

Mr. PIERSON: That is admitted.

560 Mr. MCENERNEY: I now offer in evidence the following portions thereof:

"Board of supervisors, February 17th, 1896. Monday afternoon. The board of supervisors met pursuant to adjournment. Present Supervisors King, Scully, Benjamin, Hirsch, Dimond, Hughes, Dunker, Taylor, Morgenstern, Spreckels, Hobbs and Wagner, his honor Mayor Sutro presiding. The minutes of the last meeting were read and approved." Then I offer on pages 277 and 278 the following:

"The order laid over at a former meeting granting to L. V. Merle, his associates and assigns, the same right and privilege to cremate garbage, house refuse, dead animal and putrid vegetable matter, and material of like character as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same or a portion thereof into fertilizing matter and other substances free of cost or charge to the said city and county, and making certain violations of said order misdemeanors, was taken up. Supervisor Wagner moved that it be again laid over for one week. Discussed by Supervisors Dimond and Spreckels and the motion was lost, Supervisors King, Scully, Hirsch, Dimond, Morgenstern, Taylor and Hobbs voting no. Supervisor Dimond moved for the acceptance of the bid of F. E. Sharon and presented the substitute order granting to F. E. Sharon, his asso-

ciates and assigns, the sole right and privilege to cremate garbage, house refuse, dead animal and vegetable matter and
561 material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable and to convert the same or a portion thereof into fertilizing matter and other substances free of all cost or charge to said city and county, and making certain violations of said order misdemeanors, and moved for its adoption. Discussed by Supervisors Taylor, Hughes and Dimond. Motion carried and ordered numbered 39,695, Supervisors Dimond, Hughes, Dunker and Wagner voting no."

Mr. PIERSON: We make the same objection.

Mr. MCENERNEY: Now on pages 296 and 297:

"There being no further business the board adjourned to meet Monday afternoon February 24, 1896, at 2 and ½ o'clock. John A. Russell, clerk."

Q. 42. Have you with you the substitute order offered by Supervisor Dimond and passed?

(The same objection.)

A. Yes, sir. (Producing.)
Q. 43. That is the document?

(The same objection.)

A. That is the document.
Q. 44. The original?

(The same objection.)

A. Yes, sir.

Mr. MCENERNEY: I offer it in evidence.

(The same objection. Marked "Respondents' Exhibit No. 35.")

Q. 45. Mr. Russell, on what day were the checks which
562 accompanied the bids of Merle, Skelly and Sharon received by you?

(The same objection.)

A. Well the bids were received on January 6 in open session of the board.
Q. 46. 1896?

(The same objection.)

A. 1896, yes, sir.
Q. 47. Were they accompanied by checks?

(The same objection.)

A. The checks accompanied the bids; enclosed inside.

Q. 48. Did you receive those checks January 6, 1896?

(The same objection.)

A. I did.

Q. 49. Did they come into your possession?

(The same objection.)

A. They came into my possession, yes, sir.

Q. 50. How long did they remain in your possession?

(The same objection.)

A. The check of F. E. Sharon remained in my possession until February 18, 1896, when I endorsed it and paid the money into the treasury.

Q. 51. Did you endorse the check and deliver it as endorsed to the treasurer, or did you cash it?

(The same objection.)

A. I don't know. I would not be positive about that. But my usual custom is to save annoyance and trouble of collection, to endorse the check to the treasurer.

563 Q. 52. You mean the treasurer of the city and county of San Francisco?

(The same objection.)

A. Yes, sir.

Q. 53. You had that check in your possession until the 18th of February, 1896, did you?

(The same objection.)

A. February 18, 1896, yes, sir.

Q. 54. How long did you have the check in your possession received from L. V. Merle?

(The same objection.)

A. To February 25, 1896.

Q. 55. What did you do with it on that day?

(The same objection.)

A. Mr. Merle came and called for it and received it.

Q. 56. How long did you keep in your possession the check of A. M. Skelly?

(The same objection.)

A. To February 20, 1896.

Q. 57. What did you do with it then?

(The same objection.)

A. Returned it to George D. Squires, attorney.

Q. 58. Do you keep a record of checks received with proposals in your office?

(The same objection.)

A. Yes, sir. This is the record. (Showing.)

Q. 59. You have a book devoted to that purpose?

(The same objection.)

564 A. Yes, sir.

Q. 60. Will you please produce the book?

(The same objection.)

A. This is it, sir.

Mr. McENERNEY: I offer in evidence from that book pages 70 and 71, as Exhibit 36.

(The same objection. Marked "Respondents' Exhibit No. 36.")

The WITNESS: I would like to correct that first statement. I see the endorsement is: "Paid into the city and county treasury." I must have collected it. Still I would not be positive.

Q. 61. But you had the check up until the 18th of February?

(The same objection.)

A. The 18th of February, yes, sir.

Q. 62. Mr. Russell, did Mr. Merle file in your office on the 27th of March 1896 a petition?

(The same objection.)

A. He did.

Q. 63. Have you it here?

(The same objection.)

A. Yes, sir.

Mr. McENERNEY: I offer the petition in evidence.

(The same objection. Marked "Respondents' Exhibit No. 37.")

Q. 64. Was that accompanied by a check?

(The same objection.)

A. No, that needs an explanation. There is a memorandum here, "Check left by L. V. Merle pending litigation." The
565 gentleman came in and gave me a check. I told him that the board had awarded the franchise, and he said: "Well, I want to leave this check," and he left it on the counter and I took charge of it in order to safely keep it, and that was returned on September 30, 1896.

Mr. McENERNEY: I desire to offer in evidence the following portion of the minutes of March 30, 1896. I would like to have an admission that the minutes of that meeting are shown on and appear by pages 409 to 427, inclusive, of this book?

Mr. PIERSON: That is admitted. We make the same objection.

Mr. MCENERNEY (reading): "Board of supervisors, San Francisco, March 30, 1896, Monday afternoon.—The board of supervisors met pursuant to adjournment. Present Supervisors King, Scully, Benjamin, Hirsch, Dimond, Hughes, Dunker, Taylor, Morgenstern, Spreckels, Hobbs and Wagner, his honor Mayor Sutro presiding. The minutes of the last meeting read and approved. Petitions, protests, etc. were presented, received and referred as follows." End page 409. Now, I read from page 412: "To the committee on health and police, petition of L. V. Merle demanding that his bid for the franchise for the sole right and privilege to cremate garbage be accepted, and that a franchise be awarded to him for the term of 50 years, agreeing to accept said franchise
566 subject to all the terms and conditions of resolution 13,231, third series." Page 427: "On motion the board adjourned to meet on Monday afternoon April 6, 1896 *and* 2 and ½ o'clock. John A. Russell, clerk."

Mr. PIERSON: We make the same objection. No questions, Mr. Russell.

WEDNESDAY, January 3, 1900—10 a. m.

Counsel Appearing.

For complainant, W. M. Pierson, Esq.
For respondents other than California Reduction Company, R. T. Harding, Esq.

Mr. PIERSON: Before proceeding this morning complainants will withdraw from evidence the judgment-roll in the case of L. V. Merle, petitioner, against The Board of Supervisors of the City and County of San Francisco, *et al.*, marked Respondents' Exhibit I; and unless counsel for respondents will consent to withdraw the exhibits introduced by them forming their portions of that judgment-roll, and the evidence of Mr. Mitchell, I will make a motion to strike that all out as incompetent, irrelevant and immaterial.

Mr. HARDING: I would like to consider that question. We will reserve it until the next hearing.

(Complainant's Exhibit I is returned by the examiner to Mr. Pierson.)

567 NOTE.—July 5, 1900.—Mr. Harding notified me that Respondents' Exhibits Nos. 13, 17, 20, 21 and 22 are withdrawn.

E. H. HEACOCK,
Examiner, etc.

Recess until 2:30 p. m., at which hour no proceedings were had.

FRIDAY, February 2, 1900—2:30 p. m.

Counsel Appearing.

For complainant, W. M. Pierson, Esq.
For respondents, R. T. Harding, Esq.

Examination-in-chief of ANTONIO FIGONE, a witness called on behalf of respondents, sworn.

(By Mr. HARDING:)

Q. 1. What is your full name?

A. Antonio Figone.

Q. 2. You are a scavenger by occupation, are you?

A. I can't understand much, you know; I don't speak much English.

Q. 3. Are you a scavenger?

A. Yes, sir.

Q. 4. You are sued in this suit, are you, by the Sanitary Reduction Works, in the case of the Sanitary Reduction Works against the California Reduction Company and others?

A. Yes, sir. I am in this case like every other scavenger.

Q. 5. Are you the owner of any real property in San Francisco?

568 (Objected to as incompetent, irrelevant and immaterial.)

A. I am not sole owner, but I am in partnership.

Q. 6. You have an interest in real property?

A. Yes, I have an interest in real estate, property.

Q. 7. Since what time have you been owner or interested in real property in this city and county?

(The same objection.)

A. About nine years.

Q. 8. Have you got with you a deed for that property?

(The same objection.)

A. I have.

Mr. HARDING: I wish to offer in evidence this deed, dated May 21, 1890, made by Joseph E. Faulkner, Clara L. Faulkner, Emily A. Faulkner, Emma J. Faulkner, and Annie Augusta Wynne, to Giovanni Figone and Antonio Figone, to the following described property; situated in the city and county of San Francisco, State of California, prticularly described as follows, to wit: Commencing at a point on the westerly line of Kearney street, distant ninety-five feet, six inches, northerly from the west corner of the intersection of Kearney and Green streets; running thence northerly along the westerly line of Kearney street twenty feet; thence at right angles westerly eighty feet to the easterly line of Sonoma or Sonora place; thence at right angles southerly along said line of Sonoma or Sonora

place parallel with Kearney street twenty feet; thence easterly
569 and parallel with Green street eighty feet to the point of commencement, being a subdivision of lot of land fifty varas square, known on Eddy's map of the fifty vara lot survey of the city of San Francisco, on file in the office of the county recorder in and for the city and county of San Francisco, as number 377. Said deed is recorded in volume 1403 of Deeds, at page 182 of the records in the office of the county recorder of San Francisco.

Mr. PIERSON: To the introduction of which deed in evidence we make the same objection.

(By consent the deed last referred to was not marked as an exhibit, being returned to the witness.)

(By Mr. HARDING:)

Q. 9. Mr. Figone, are you now owner in that land?

(The same objection.)

A. Yes, sir.

Q. 10. Have you paid the taxes?

(The same objection.)

A. I pay every year as I have been doing.

Q. 11. You have paid taxes every year since you have owned it?

(The same objection.)

A. Yes, sir.

(It is stipulated that Pietro Musante, Pietro Leonardini, and D. Frienzi, sued here as D. Frienzi, would, if called, testify substantially to the same facts to which Antonio Figone has testified.)

570 Mr. HARDING: This is our case.

The EXAMINER: Let it be noted of record that respondents to-day present Exhibits Numbers 9, 27, and 35, all under one cover, which are marked by me as examiner.

(It is stipulated by and between the respective counsel that the respondent may have twenty days within which to introduce proofs in rebuttal.)

I certify that the foregoing depositions were taken pursuant to the notice hereunto prefixed, at the place stated in the caption to said depositions, at the several times set forth in said depositions, in my presence, and in the presence of counsel for the respective parties to the cause in said caption entitled; that, previous to giving his testimony, each of the witnesses in said depositions named was by me duly sworn to tell the truth, the whole truth and nothing but the truth, in said cause; that said depositions were taken down in shorthand writing and transcribed by B. C. Brown, pursuant to stipulation and agreement of counsel; that the reading and signing of said depositions were, by agreement of said counsel, waived, as in stipulation herein set forth; and that I have retained said deposi-

tions for the purpose of delivering the same with my own hand to the court for which they were taken.

Accompanying said depositions, and forming part thereof, are the several exhibits introduced in connection therewith, and referred to and specified therein.

571 I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand, this 7th day of July, A. D. 1900.

E. H. HEACOCK,
Examiner in Chancery, United States Circuit Court,
Northern District of California.

(10c. int. rev. stamp canceled, July 7, 1900.)

(Endorsed:) Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

COMPLAINANT'S EXHIBIT "A."

Order No. 2965.

Granting to F. E. Sharon, his associates and assigns, the sole right and privilege to cremate garbage, house refuse, dead animals and putrid vegetable matter and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same, or a portion thereof, into fertilizing matter and other substances, free of all cost or charge to said city and county, and making certain violations of this order misdemeanors.

Whereas, the disposal of house refuse, butchers' offal, garbage, putrid or stinking animal or vegetable matter, refuse, ashes, or other like matter, by cremation, or by some process of chemical reduction, is the only effective means to dispose of the same to prevent

572 the said matter and material from being deposited in or upon lots, lands and public streets situate in the city and county or in the waters of the bay, as heretofore, to the prejudice of the public health; and

Whereas, under the provisions of an act of the legislature entitled "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises" (approved March 23, 1893), bids for a franchise were duly called for; and

Whereas, F. E. Sharon was the highest and best bidder for the said franchise, as hereinafter recited, and all the forms and requirements of law necessary thereto being complied with; now, therefore,

The people of the city and county of San Francisco do ordain as follows:

In consideration of the sum of twenty-five hundred and ten dollars, the receipt of which is hereby acknowledged, and in consideration of the further payment of two per centum for the term of fifteen years from and after the date of this franchise, and the payment of five per centum for the remaining term of thirty-five years, on the gross amount of the receipts to be derived by the said F. E. Sharon, his associates or assigns, under this franchise, to be paid into the treasury of the city and county of San Francisco each and every year during the continuance of this franchise, the franchise hereinafter recited is hereby granted to F. E. Sharon, his associates and assigns.

SECTION 1. The sole and exclusive right and privilege is hereby conferred upon and granted to F. E. Sharon, his associates and
573 assigns, for a term of fifty years from and after the approval of this order, to cremate and destroy within the city and county aforesaid, by crematories or by a process of reduction, house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted), and putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and the said grantees, their associates and assigns, shall have the right and privilege to charge and collect therefor not exceeding the sum of twenty cents per load such load not to exceed a cubic yard, on the delivery of the above material or substances at the plant or works where the crematory or reduction plant is established.

SECTION 2. The grantees, their associate and assigns, shall within a period of twenty-four (24) months after the granting of this franchise, unless the time is extended therefor by this board, have fully erected and constructed and in operation a suitable building or buildings, and equip, fit up and install the same with the necessary crematories machinery, tools and appliances required to cremate and destroy by cremation, or by a process of reduction, all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, and any dead animal and putrid vegetable matter, and fish, flesh and food condemned by the board of health as unfit for human food, the works to be constructed to cremate
574 or reduce at least three hundred tons per day of the materials specified in this section, and the capacity to be increased as required from time to time.

SECTION 3. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to remove through the public streets from any houses, hotels, markets, hospitals, factories, restaurants, stores or any other like building or place in the city and county, any refuse, butchers' offal, garbage, dirt, ashes, cinders, sludge,

crockery, tins, bones, or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food condemned by the board of health as unfit for human food, or dead animals whose removal is not otherwise provided for by contract or franchise heretofore granted, unless the same shall be removed through said public streets in closed vehicles and wagons constructed so as to conceal the contents from public view, and to effectually prevent any smell escaping therefrom, as well as to prevent the droppings of any portion of such material or substances on or upon the public streets, and which said vehicles and wagons shall be constructed in accordance with specifications approved by the board of health of said city and county.

SECTION 4. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to dump or place upon any land within said city and county, or in any water or waterways within said city and county, any refuse, butchers' offal, garbage or
575 other material mentioned in section 3 of this order, but such refuse, butchers' offal, garbage and other material shall be forthwith delivered to the crematory herein provided for, and there at the expense of the person or corporation so conveying the same be cremated or destroyed, or subjected to such disposition and treatment as will at once secure and effect a complete combustion of all gases and odors arising therefrom.

SECTION 5. The said grantees, their associates and assigns, upon receipt of any of the material or substances specified in this order shall within twenty-four (24) hours thereafter cremate or reduce the same, or shall subject the same to such process as will secure the complete combustion of all gases or odors arising therefrom. The said grantees, their associates and assigns, shall maintain and operate their plant and crematory or crematories, or other apparatus, and the matter and substances received, so as to prevent any obnoxious smells or gases being emitted either from the deposits of such matter or substances on their premises or from the process of cremation or other treatment thereof, or from the residuum remaining after cremation or treatment as aforesaid; also, that in the operation of said works no smoke or soot shall be emitted so as to constitute a nuisance.

SECTION 6. The said grantees, their associates and assigns, shall from and after the first day of December, 1902, have the sole and exclusive right and privilege during the continuance of the remainder of the term of this franchise to remove and dispose of the
576 carcasses of all dogs killed at the public pound, and all animals impounded and not redeemed by the owners thereof and which are valueless and cannot be sold; also, to remove and dispose of the carcasses of all dead animals found upon the public streets, and the carcasses of all dead animals in said city and county not slain for human food, which shall not be removed and disposed of by the owners thereof so as not to become a nuisance within

hours after the death of the same; provided that in the event the parties now holding and exercising this privilege or removing the dead animals not slain for human food should hereafter fail or refuse to remove the dead animals and should forfeit their contract with said city and county, then immediately upon such forfeiture the right to remove said dead animals shall vest in the grantees herein, their associates and assigns under this order.

SECTION 7. This board will pass such orders as may be required from time to time to enable the said grantees, their associates and assigns, to enjoy and have the benefit of all the rights and privileges herein granted, and on the completion of the work will pass such other and additional orders as will enable the said grantees, their associates and assigns, to carry out the contemplated destruction of garbage, offal, house refuse and material mentioned in this order and the conversion of the substances herein named for fertilizing and other purposes, and for the segregation prior to delivery of garbage and offal from ashes and other refuse.

SECTION 8. The said grantees, their associates and assigns,
577 shall at all times be subject to and conform to all health and sanitary regulations and requirements enacted and in force during the existence of this franchise. The said grantees, their associates and assigns shall receive no compensation whatever from the city and county for any service performed under the conditions of this order in disposing of the material and substances specified in this order.

SECTION 9. This franchise shall cease and determine upon the failure of the grantees, their associates and assigns, to fully carry out and faithfully perform the obligations herein imposed, unless from unavoidable cause beyond the control or power of the grantees, their associates and assigns, by reason of any fire or other casualty, the operations and works shall be destroyed or temporarily suspended in their operation. The said grantees, their associates and assigns, in the event of an accident to or destruction of their works, shall, during the time such works cannot be operated, and until said works are repaired or reconstructed, and within such reasonable time as may be allowed and approved by this board, shall deodorize the material and substances specified in this order and dispose of the same as directed by this board, so as to prevent all noxious gases or odors escaping therefrom, until the said material or substances are cremated or utilized as provided by this order.

SECTION 10. All of the machinery and appliances used shall be of California manufacture, except such as are manufactured exclusively or patented in the eastern States or abroad.

578 SECTION 11. The said grantees, their associates and assigns, shall, within a period of ten days from the date of the approval of this order, file with the clerk of this board their acceptance of its provisions and of this franchise.

SECTION 12. Any violation of the provisions of section 3 and 4 of

this order shall be and are hereby declared to be a misdemeanor, and punishable as such.

SECTION 13. This order shall take effect and be in force on and from its passage.

All orders or parts of orders in conflict with the provisions of this order are hereby repealed and made null and void.

And the clerk is hereby directed to advertise this order as required by law.

In board of supervisors, San Francisco, February 17, 1896.

Adopted by the following vote:

Ayes—Supervisors King, Scully, Hirsch, Dimond, Taylor, Morgenstern, Spreckles, Hobbs.

Noes—Supervisors Benjamin, Hughes, Dunker, Wagner.

JNO. A. RUSSELL, Clerk.

STATE OF CALIFORNIA, City and County of San Francisco, } ss:

Office of the Board of Supervisors of the City and County of San Francisco.

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify
579 That, as clerk of the said board of supervisors, I have charge and custody and am the legal keeper of all the minutes, records and archives of said board of supervisors.

I further certify that the annexed printed document is a full, true and correct copy of order No. 2965 of said board of supervisors, and that said order was passed by said board of supervisors on the 17th day of February, 1896, and was adopted by vote of the supervisors therein named as voting in the affirmative thereon, and which said order No. 2965 is of record and on file in my said office.

I further certify that at the date of the passage of said order, said board of supervisors consisted of the twelve supervisors whose names appear in said order No. 2965 as voting in the affirmative and negative thereon.

I further certify that said order was advertised under the direction of said board of supervisors as required by law.

In witness whereof, I have hereunto set my hand as clerk of said board of supervisors of the city and county of San Francisco, State of California, this 29th day of March, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

(Endorsed:) U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Fco. *et al.* vs. The Cal. Reduction
580 Co. *et al.* No. 12,714. Complainant's Exhibit "A." E. H. H. examiner. Published by order of court and filed January 1, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

Complainant's Exhibit "B."

Order No. 12 (Second Series).

Prohibiting the dumping of dirt, garbage, butcher's offal or putrid matter, etc., upon any lands in the city and county of San Francisco, or on the waterfront, or from any wharf or bulkhead in said city and county, and providing for the cremation and destruction of the same, and the duties of officers in relation thereto.

Whereas, from time to time during the last twenty years, the dumping of garbage, dirt, offal, horse refuse, stinking animals or vegetable matter, ashes, cinders, sludge, acids or like matter, to fill in lots and property and particularly in filling in water lots, became so objectionable and deleterious to the public health that various plans have been adopted to mitigate such nuisance; and

Whereas, while steps have been heretofore taken to abate such nuisance by covering the same over with sand it has become apparent that the lots so filled in have thrown off noxious gases, deleterious to the public health, and in case of the prevalence of any epidemic disease would become a fruitful source of danger to the sanitary well-being of our citizens; and

Whereas, the board of health from time to time has called attention to and condemned the disposition of such garbage and
581 refuse matter in the filling of lots and have repeatedly urged the cremation of such substances to protect the public health; and

Whereas, in order to provide satisfactory means by which all such deleterious matter should be disposed of an exclusive franchise was, by order No. 2965 of this board, passed, February 17, 1896, sold by this city and county authorizing the cremation and destruction of such substances; and

Whereas, the Sanitary Reduction Works, the assignee and successor in interest of the grantee of such franchise, has notified this board of the completion of their works and of their readiness to receive, cremate and destroy all of such substances in accordance with the terms and under the conditions of said franchise; now, therefore,

The people of the city and county of Francisco do ordain as follows:

Section 1. No person, company or corporation shall, on and after the 8th day of November, 1897, deposit, dump or cause to be dumped or deposited upon any street, lot or lands within said city and county, or in any water or waterways within said city and county, or from any wharf or bulkhead on the waterfront of said city and county, except as hereinafter provided, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, broken glass

crockery, tins, bones, rubbish or other like matter, or any dead animals (not otherwise provided for by contract or franchise heretofore granted by the city and county), or putrid or stinking
582 animal or vegetable matter or fish, flesh and food condemned by the board of health as unfit for human food.

All such refuse, butchers' offal, garbage, ashes, cinders, sludge, acids or other like substances or matter hereinbefore enumerated shall be delivered at and to the crematory of the Sanitary Reduction Works on the block bounded by Rhode Island, Alameda, De Haro and Fifteenth streets, in said city and county, and there at the expense of the person, company or corporation so conveying the same, be cremated and destroyed or subjected to such disposition and treatment as will secure and effect a complete combustion of all gases and odors arising therefrom as provided in the franchise aforesaid.

(Penalty—Duty of Chief of Police.)

SECTION 2. Any person, company or corporation violating the provisions of this order shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding two hundred and fifty ($250) dollars, or by imprisonment for a term not exceeding one hundred days, or by both such fine and imprisonment; and it shall be the duty of the chief of police to take such steps and issue such orders to the members of the force under his control as shall insure the arrest and punishment of any and all persons violating the provisions of this order.

(Board of Health to Aid in Enforcement of Order.)

SECTION 3. It shall be and is hereby made the duty of the board of health to aid by all means in its power the enforcement of the provisions of this order.

583 SECTION 4. Order No. 2300 and all orders or parts of orders, conflicting with the provisions of this order are hereby repealed.

In board of supervisors, San Francisco, November 1, 1897.

After having been published five successive days, according to law, taken up and passed by the following vote:

Ayes—Supervisors Haskins, Delaney, Sheehan, Dodge, Lackman, Rottani, Morton, Smith, Rivers.

Absent—Supervisors Devany, Britt, Clinton.

JNO. A. RUSSELL, Clerk.

Approved San Francisco, November 4, 1897.

JAS. D. PHELAN,
Mayor and *Ex-officio* President of the
Board of Supervisors.

STATE OF CALIFORNIA, City and County of San Francisco, } ss:

Office of the Board of Supervisors of the City and County of San Francisco.

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify: That, as clerk of the said board of supervisors, I have charge and custody and am the legal keeper of all the minutes, records and archives of said board of supervisors.

584 I further certify that the annexed printed document is a full, true and correct copy of order No. 12 (second series) of said board of supervisors, and that said order was passed by said board of supervisors on the 1st day of November, 1897, and was adopted by vote of the supervisors therein named as voting in the affirmative thereon, and which said order No. 12 (second series) is of record and on file in my said office.

I further certify that at the date of the passage of said order, said board of supervisors consisted of the twelve supervisors whose names appear in said order No. 12 (second series) as voting in the affirmative and negative thereon.

I further certify that said order was advertised under the direction of said board of supervisors as required by law.

I further certify that order No. 12 (second series), after having been passed by said board of supervisors was duly presented to and approved by the mayor and *ex-officio* president of the board of supervisors on the 4th day of November, 1897.

In witness whereof, I have hereunto set my hand as clerk of said board of supervisors of the city and county of San Francisco, State of California, this 27th day of March, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

585 (Endorsed:) U. S. circuit court, N. Dist. of Cal. The Sanitary Reduction Works of San F'co. *et al. vs.* The Cala. Reduction Co. *et al.* No. 12,714. Complainant's Exhibit "B." E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

COMPLAINANT'S EXHIBIT "C."

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

Office of the Board of Supervisors of the City and County of San Francisco.

I, John Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California do hereby certify:

That, as clerk of the board of supervisors I have charge and custody and am the legal keeper of all the minutes, records and archives of said board of supervisors.

I further certify, that the annexed printed document is a full, true and correct copy of resolution No. 2233 (fourth series) of said board of supervisors, and that said resolution was adopted by said board of supervisors on the 16th day of January, 1899, and which said resolution No. 2233 (fourth series) is of record and on file in my said office.

In witness whereof, I have hereunto set my hand as clerk of said board of supervisors of the city and county of San Fran-
586 cisco, State of California, this 28th day of March, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

Resolution No. 2233 (Fourth Series).

Whereas, the Sanitary Reduction Works of San Francisco filed in the office of the clerk, a communication stating that the gross receipts of said works from December 31, 1897, to December 31, 1898, amounts to the sum of $46,584.20 for the burning of garbage, and enclosing a check for the sum of $931.68, the same being two per cent. of the gross receipts of said works for the year ending December 31, 1898, and which two per cent. of said gross receipts is required to be paid to the city and county under the provisions of order No. 2965; therefore

Resolved, That the clerk be and he is hereby directed to deliver said check for the sum of $931.68 to the treasury, the amount to be paid to the credit of street department fund.

And the clerk is hereby directed to advertise this resolution in "The Evening Post" newspaper, as required by law.

In board of supervisors, San Francisco, January 16, 1899.

Adopted by the following vote:

Ayes—Supervisors Holland, Kalben, Black, Perrault, Phelps, Lackman, Collins, Heyer, Deasy, Attridge, Aigeltinger.

Absent—Supervisor Byington.

JNO. A. RUSSELL, Clerk.

587 (Endorsed:) U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Francisco *et al. vs.* The Cal. Reduction Co. *et al.* No. 12,714. Complainant's Exhibit "C." E. H. H. examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

COMPLAINANT'S EXHIBIT "D."

This agreement, made this 22d day of November, 1898, between the California Reduction Company, a corporation to transact business in the State of California, the party of the first part, and the persons whose names and signatures appear upon Exhibit "A" hereunto annexed, made a part hereof, and hereby referred to for the parties of the second part.

Witnesseth: That the said parties of the first and second parts mutually agree, each in consideration of the covenants and agreements of the other, as follows, to wit:

SECTION 1. The said party of the first part agree within thirty days after the execution of this agreement to provide one or more suitable buildings, wharves or other places for the reception, from the said parties of the second part, of all garbage, ashes, refuse, butchers offal, dirt, sludge, crockery, tins or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food, or any dead animals; which said buildings, wharves, or other place or places shall be so located that the average haul to the same
588 shall not exceed the average haul to the Sanitary Reduction Works by more than one quarter of a mile.

SECTION 2. The said parties of the first part, agree to receive at the above-mentioned place or places all the materials and substances specified in section one hereof, and to dispose of the same in some legal manner and without any further, other or additional cost or expenses to the said parties of the second part, than the cost and expense specified in section three hereof.

SECTION 3. The said parties of the second part, hereby declare that they are and each of them is, engaged in the business of scavengers in the city and county of San Francisco, and that they each are the owners or interested in one or more wagons employed in the business of gathering garbage in said city and county; and the said parties of the second part hereby agree, and each of the said parties of the second part agrees that as soon as the said party of the first part shall be prepared to receive garbage at the place or places mentioned in section 1 hereof, that they, and each of them, will bring and deliver all garbage, ashes, manure, refuse, butchers offal, dirt, sludge, crockery, tins or other like matter, or any putrid animal or vegetable matter, or any fish, flesh, or food, or any dead animals gathered by them, at such place or places, and pay to the said party of the first part upon receipt by them of any of the materials or substances herein specified, the sum of eighteen cents for each and

COMPLAINANT'S EXHIBIT "C."

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Office of the Board of Supervisors of the City and County of San Francisco.

I, John Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California do hereby certify:

That, as clerk of the board of supervisors I have charge and custody and am the legal keeper of all the minutes, records and archives of said board of supervisors.

I further certify, that the annexed printed document is a full, true and correct copy of resolution No. 2233 (fourth series) of said board of supervisors, and that said resolution was adopted by said board of supervisors on the 16th day of January, 1899, and which said resolution No. 2233 (fourth series) is of record and on file in my said office.

In witness whereof, I have hereunto set my hand as clerk of said board of supervisors of the city and county of San Fran-
586 cisco, State of California, this 28th day of March, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

Resolution No. 2233 (Fourth Series).

Whereas, the Sanitary Reduction Works of San Francisco filed in the office of the clerk, a communication stating that the gross receipts of said works from December 31, 1897, to December 31, 1898, amounts to the sum of $46,584.20 for the burning of garbage, and enclosing a check for the sum of $931.68, the same being two per cent. of the gross receipts of said works for the year ending December 31, 1898, and which two per cent. of said gross receipts is required to be paid to the city and county under the provisions of order No. 2965; therefore

Resolved, That the clerk be and he is hereby directed to deliver said check for the sum of $931.68 to the treasury, the amount to be paid to the credit of street department fund.

And the clerk is hereby directed to advertise this resolution in "The Evening Post" newspaper, as required by law.

In board of supervisors, San Francisco, January 16, 1899.

Adopted by the following vote:

Ayes—Supervisors Holland, Kalben, Black, Perrault, Phelps, Lackman, Collins, Heyer, Deasy, Attridge, Aigeltinger.

Absent—Supervisor Byington.

JNO. A. RUSSELL, Clerk.

(Endorsed:) U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Francisco *et al.* vs. The Cal. Reduction Co. *et al.* No. 12,714. Complainant's Exhibit "C." E. H. H. examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

Complainant's Exhibit "D."

This agreement, made this 22d day of November, 1898, between the California Reduction Company, a corporation to transact business in the State of California, the party of the first part, and the persons whose names and signatures appear upon Exhibit "A" hereto annexed, made a part hereof, and hereby referred to for the parties of the second part.

Witnesseth: That the said parties of the first and second parts mutually agree, each in consideration of the covenants and agreements of the other, as follows, to wit:

Section 1. The said party of the first part agree within thirty days after the execution of this agreement to provide one or more suitable buildings, wharves or other places for the reception, from the said parties of the second part, of all garbage, ashes, refuse, butchers offal, dirt, sludge, crockery, tins or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food, or any dead animals; which said buildings, wharves, or other place or places shall be so located that the average haul to the same
538 shall not exceed the average haul to the Sanitary Reduction Works by more than one quarter of a mile.

Section 2. The said parties of the first part, agree to receive at the above-mentioned place or places all the materials and substances specified in section one hereof, and to dispose of the same in some legal manner and without any further, other or additional cost or expenses to the said parties of the second part, than the cost and expense specified in section three hereof.

Section 3. The said parties of the second part, hereby declare that they are and each of them is, engaged in the business of scavengers in the city and county of San Francisco, and that they each are the owners or interested in one or more wagons employed in the business of gathering garbage in said city and county; and the said parties of the second part hereby agree, and each of the said parties of the second part agrees that as soon as the said party of the first part shall be prepared to receive garbage at the place or places mentioned in section 1 hereof, that they, and each of them, will bring and deliver all garbage, ashes, manure, refuse, butchers offal, dirt, sludge, crockery, tins or other like matter, or any putrid animal or vegetable matter, or any fish, flesh, or food, or any dead animals gathered by them, at such place or places, and pay to the said party of the first part upon receipt by them of any of the materials or substances herein specified, the sum of eighteen cents for each and

every cubic yard of such material or substance so delivered and re-
ceived; provided that second parties reserve the right to sel-
589 such refuse, manure, clean papers, ashes, tins, and all articles
that are salable.

SECTION 4. It is agreed that the capacity of each wagon employed by the parties of the second part in hauling and delivering garbage shall be determined by two competent persons, one to be appointed by the party of the first part, and the other to be appointed by the parties of the second part. Said persons shall measure each wagon, calculate its cubic capacity at different elevations in the box and affix to each wagon a scale by which the cubic contents of each wagon may be determined by units of one-half cubic yard each. Should said parties disagree, the question shall be referred to the city and county surveyor for final decision. Upon delivering garbage the said parties of the second part shall pay for each cubic yard or fraction thereof as hereinabove provided, according to the cubic contents of material as indicated by such scale on their wagons, and the said parties of the first part agree to receive all material according to such scale measurements, upon payment to them of the sum of eighteen cents for each yard of material or a proportionate price for any fractional cubic yard delivered, no single delivery to be of less than one cubic yard.

SECTION 5. First party to protect second parties from each and all arrests caused by second parties delivering any of the materials in this contract named to first party, and to pay all expenses for defending any of said second parties who may be arrested by reason of delivering any of the articles herein named to first party.

SECTION 6. It is further agreed that this agreement shall be
590 and remain in full force and effect, and binding upon the
said first and second parties for the term of five years from the date hereof, allowing, however, to the parties of the first — the period of thirty days from the execution hereof by the said parties within which to prepare to receive and dispose of the said garbage and material.

SECTION 7. The said parties of the second part shall, upon the execution of this agreement, make, execute, and deliver to the said party of the first part, a good and sufficient bond with at least two sureties who shall be satisfactory to said party of the first part, in the sum total, aggregating one hundred dollars for each of said parties of the second part, who may operate one or more two-horse wagons in their said business the sum of fifty dollars to be computed for each of the parties of the second part operating no more than one, one-horse wagon in lieu of one hundred dollars for parties operating at least one two-horse wagon; conditioned that each and every and all of said parties of the second part shall faithfully perform and keep all and every of the terms, conditions, and covenants of this agreement to be by them kept and performed.

It is understood that said bond may be sued on successively upon each violation of this agreement by any one or more of said

cond parties and until the full penal sum thereof shall have been exhausted, and it is further agreed that damages sustained by the infraction of this agreement by any one of said second parties shall not for any one infraction exceed one hundred dollars, and that attorneys fees shall be allowed in each action
591 brought on said bond, in addition to said one hundred dollars, such fees to be the amount usually allowed on foreclosure of mortgage.

SECTION 8. The said party of the first part shall, upon the execution of this agreement by them, execute a good and sufficient bond in the sum of four thousand dollars to said parties of the second part, with bondsmen to their satisfaction conditioned that said party of the first part faithfully performing and keeping all and each of the covenants and conditions of this agreement to be by them kept and performed.

But it is, however, understood that no party hereto shall be responsible either personally or on his bond for failure to keep the terms of this agreement should such failure be caused by the direct interference of any court of law, or by a final adjudication of any court declaring the provisions of this agreement illegal.

SECTION 9. The parties of the second part agree not to deliver any of the material or substances mentioned herein to any other party than said party of the first part, or at any other place than as designated and chosen by said party of the first part; and said parties of the second part hereby stipulate that should any one or more of said parties of the second part deliver or discharge said materials elsewhere or to any other person than as herein designated, that said party of the first part may at its election proceed on the bond provided hereunder or may have and are thereupon entitled to an injunction against said party or parties from any court of competent jurisdiction, forbidding said party or parties to thereafter dump said substances or materials at any point or to de-
592 liver them to any person not authorized by the terms of this agreement.

Should said party of the first part elect to proceed by injunction, it is hereby agreed and stipulated that said injunction may issue on the filing of a certified copy of this agreement in the proper legal proceeding in said court, and that the said party of the first part have in such premises no plain, speedy or adequate remedy at law, and that should said infraction of this contract continue, great and irreparable injury would result to said part- of the first part, which cannot be adequately compensated in damages.

SECTION 10. It is understood that this agreement is to cover and provide for the delivery of all the substances mentioned in section 3 hereof, by each and all the scavengers, parties hereto, to said party of the first part, for the term mentioned, except only as provided in sections numbers three and eleven.

SECTION 11. It is hereby stipulated that any party hereto who gathers or receives in San Francisco a full wagon load of clean fac-

tory ashes or clinkers, with no other or foreign substance therein, shall have the privilege of delivering the same to said party of the first part for disposal, free of charge to said second party. But should said party of the first part desire to have said clean ashes or clinkers delivered at some other place than at the receiving depot of said party of the first part, they may have such delivery by so notifying the party having such ashes or clinkers for delivery, of the place of delivery desired by said first party, and said second
593 party shall deliver said material as desired. But it is stipulated said delivery shall not be required at any point, the haul to which exceeds the haul to the regular place of delivery of said party of the first part by one-half mile.

SECTION 12. All notices to be served on said parties of the second part, relative to this agreement, may be served either individually on the said second parties affected thereby or upon one or both of said bondsmen; and if so served shall have full force and effect.

SECTION 13. But it is hereby agreed by said party of the first part that it shall not take garbage from any other persons under any terms more favorable than those secured by this said contract to the said parties hereto, unless such favorable terms be extended to all parties concerned therein.

SECTION 14. Each and every of the terms of this agreement to bind the respective executors, administrators, successors, heirs and assigns of the parties hereto.

In witness whereof, and in pursuance of a resolution of its board of directors, first party has caused these presents to be signed by its president and secretary, and its corporate seal to be affixed, and the second parties have respectively signed their names the day and year first above written.

[CORPORATE SEAL.] THE CALIFORNIA REDUCTION CO.,
By BEHREND JOOST, President,
By JOHN CLEMISHIRE, Secretary.

594 Erasures initialed in paragraphs No. 1 and 6 made before execution.

ALFRED L. BLACK.
ANDREA REPETTA. 12.
MICHELLA MAROS. 11.
FRANCESCO POPIANO. 146.
GIAMBATTISTO BAGGIO. 120.
DOMENICO ESPARTO. 172.
RUSTICI RAETO. 43.
VARNI ANTONIO. 137.
BAROZZI PAOLO. 28.
FIRENZE GIOVANNI. 95.
RUNCALLO GUISEPPE. 104.
FIGONE FRANCESCO. X 51.
SORANO FRANCESCO. 34.

FIGONE LUIGI.	X 52.
RUSTICI ANGELO.	26.
S. SEMENSA SLUCHINETTI.	71.
CARLO LERCARI.	55.
GIOVANNI PIETT.	18.
ANTONIO FIGONE.	88.
GIO QUEIROLO	75.
G. B. TURRE.	88.
A. CHIAPPELLONE.	8.
L. COSISLO.	50.
B. GAMBRUNO.	10.
ANDREA.	1101.
GIOVANNI RENATI.	90.
STEFANO R.	108.
PETER CALOSI.	141.
GIOVANNI FIGONE.	94.
ANGELO DEVINCENZI.	87.
ANTONIO FIGONE.	X 179.
P. DEMARTINI.	31.
GAGLIONO VARNI.	122.
LUIGI FIGONE.	22.
ANTONIO DELUCHI.	X 76.
ANGELO BRANCHI.	124.
LUIGI NOY.	155.
CAMPI ANTONIO.	89.
DOMENICO FIRENZZI.	162.
GIOVANNI FIGONE.	22.
C. VALENTE.	32.
LUIGI FERARI.	133.
LUIGI DEVINCENZI.	112.
E. PICETATI.	X 80.
ANGELO DEVINCENZI.	X 117.
CUNEO MICHELE.	36.
LUIGI FIRPO.	30.
OTTARIO TORRE.	96.
GUISEPPE DE MARTINI.	47.
GUISEPPE TORRE.	114.
LUI CACIGALUPEE.	48.
GIAVA EMANUELE.	43.
DAVIDE DE MARTINI.	103.
FRANCESCO DELUCCHI.	66.
STEFANO CAPELLO.	15.
GUISEPPE MOLINARI.	35.
GIOVANNI NOCE.	11.
ANTONIO DEVINCENZI.	153.
DOMENICO BARGAGLIOTI.	121.
PAGONINO GIOVANNI.	44.
JULIO DE MARTINI.	23.
LUIGI FERRARI.	73.

	FREDINATTI NINATI.	81.
	LUIGI FIGONE.	61.
	ANTONIO CUNEO.	124.
	GIOVANNI FIGONE.	74.
	GIOVANNI FIGONE.	143.
	AMERICCO SERACCI.	117.
	M. D. LEVENSEN.	4, 5, & 6.
	DINI SORACCO.	151.
	FRANCESCO FRAVEGA.	62.
	GI FOPIANO.	60.
	S. B. LINARI.	80.
	OTTO BORRE BERTOLOMEO.	82.
	G. GINIO.	200.
	D. FIGONE.	112.
	GUISEPPE FIGONI.	X 72.
	LUIGI DEVINCENZI.	167.
	G. B. BAGGIO.	No. 21.
	VITTORIO REPPETO.	No. 70.
	DOMENICO FIRENZE.	133.
	ANTONIO BONELLI.	No. 96.
	CARLO ROSSI.	17.
	FOSSA G. B.	14.
	G. CEREGHINO.	No. 148.
	ANTONIO x CAMICIA.	154.
	EMILIO DEVINCENZI.	No. 189.
	PIETRO LEONARDINI.	No. 77.
597	GUISEPPE DEVINENZI.	No. 147.
	GIOVANNI x CAMICIA.	155.
	G. B. CERUTI.	No. 205.
	ANTONIO MOSCONI.	No. 122.
	C. ARCONI.	72.
	GIOVANNI DEVINCENZI.	No. 107.
	PIETRONAVE CESARE.	33.
	LANTERI FELICE.	14.
	LORENZO GOTELLI.	157.
	CHIAPPELLONO GIUSEPPE.	128.
	LUCHETTI GIOVANNI.	67.
	D. FIGONE.	135.
	D. FIGONE.	136.
	BATTO PIETRO.	143.
	G. FIGONE.	142.
	GOTTELLI VINCENZO.	152.
	G. GOBORINO.	176.
	DOMENICO DELLUCCHI.	122.
	MORO MORISCO.	169.
	G. BINIOLINARI.	54.
	FRANCESCO PICCOLLO.	58.
	FELICE ROCCHA.	19.
	B. PASQUALITI.	16.

LUIGI FIGONE. X 140.
Z. CONGELLI. 81.
ANTONIO BACIONI. 105.
GUISEPPE FIGONE,
As Trustee for Above Signers.

(Endorsed:) U. S. circuit court, N. dist. of Cal. The Sani-
3338 tary Reduct'n Works of San Francisco *et al.* *vs.* The Cal. Re
duct'n Co. *et al.* No. 12,714. Complainant's Exhibit "D."
E. H. H., examiner. Published by order of court and filed January
3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy
clerk.

COMPLAINANT'S EXHIBIT "H."

Sanitary Reduction Works.

Platform L 6872. Date —— —. 5-2-99.
No. 6872.
No. 26. Name —— ——. Am't 50.
Yards 2½

(Endorsed:) U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Francisco *vs.* Cal. Reduction Co. *et al.* No. 12714. Complainant's Exhibit "H." E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

3339 COMPLAINANT'S EXHIBIT "J."

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District of California.

SANITARY REDUCTION WORKS
vs.
CAL. REDUCTION CO. ET AL. } No. 12714.

The President of the United States of America to Henry Wadsworth Greeting:

You are hereby required that all and singular business and excuses being set aside, you appear and attend before E. H. Heacock, Esq., examiner of the circuit court of the United States, of the ninth judicial circuit, in and for the northern district of California, to be held at the courthouse of said court, room No. 87, in the new Appraisers' building, situate on the northeast corner of Washington and Sansome streets, in the city and county of San Francisco, State,

of California, on the 3d day of January, A. D. 1900, at 10 o'clock, a. m., then and there to testify in the above-named cause, now pending in said court, on the part of the above-named defendants, and have and bring with you and then and there produce all books and records of Wells, Fargo & Co. bank, showing all checks certified by said bank from and including the 26th day of November, 1895, to and including the 6th day of January, 1896, and also all certificates of deposit issued by said bank from and including the 26th day of November, 1895, to and including the 6th day of Janu-
600 ary, 1896, which have since said times been paid by said bank.

And for a failure to attend as above required, you will be deemed guilty of contempt of court, and liable to pay to the party aggrieved all loss and damages sustained thereby.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, this 2d day of January, in the year of our Lord one thousand nine hundred, and of our Independence the 124th.

[SEAL.] SOUTHARD HOFFMAN, Clerk,
By W. B. BEAIZLEY, Deputy Clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District of California.

SANITARY REDUCTION WORKS
vs.
CALIFORNIA REDUCTION COMPANY ET AL. } No. 12714.

The President of the United States of America to Henry Wadsworth, cashier of Wells, Fargo & Co. bank, Greeting:

You are hereby required that all and singular business and excuses being set aside, you appear and attend before E. H.
601 Heacock, Esq., examiner of the circuit court of the United States, of the ninth judicial circuit, in and for the northern district of California, to be held at the courthouse of said court, room No. 87, in the new Appraisers' building, situate on the northeast corner of Washington and Sansome streets, in the city and county of San Francisco, State of California, on the 28th day of December, A. D. 1899, at 2 o'clock p. m., then and there to testify in the above-named cause, now pending in said court, on the part of the above-named respondents, and have and bring with you and then and there produce any and all books and records of Wells, Fargo & Co. bank showing all checks certified by said bank from and including November 26th, 1895, to and including January 6th, A. D. 1896.

And for a failure to attend as above required, you will be deemed

guilty of contempt of court, and liable to pay to the party aggrieved all loss and damages sustained thereby.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, this 27th day of December, in the year of our Lord one thousand eight hundred and ninety-nine and of our Independence the 124th.

[SEAL.] SOUTHARD HOFFMAN, Clerk,
By W. B. BEAIZLEY, Deputy Clerk.

602 (Endorsed:) U. S. circuit court, ninth circuit, northern district of California. Sanitary Reduction Works *vs.* Cal. Reduction Co. *et al.* Copy subpœna. U. S. circuit court, N. dist. of Cal. Sanitary Reduct'n Works of San Fco. *et al. vs.* Cal. Reduction Co. *et al.* No. 12714. Complainant's Ex. "J." E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

603 RESPONDENTS' EXHIBIT No. 1 AND RESPONDENTS' EXHIBIT No. 11.

SAN FRANCISCO, March 1st, 1898.

Mr. M. D. Levenson to Sanitary Reduction Works, Dr.

1898.					
Jan.	To balance due				$28.25
Feb. 1.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 1.	To incinerating	1 load	7½	yds. refuse at 20 cents	1.50
Feb. 1.	To incinerating	1 load	10½	yds. refuse at 20 cents	2.10
Feb. 1.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 2.	To incinerating	1 load	9½	yds. refuse at 20 cents	1.95
Feb. 2.	To incinerating	1 load	7½	yds. refuse at 20 cents	1.50
Feb. 2.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 2.	To incinerating	1 load	6½	yds. refuse at 20 cents	1.30
Feb. 3.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 3.	To incinerating	1 load	8	yds. refuse at 20 cents	1.60
Feb. 3.	To incinerating	1 load	10½	yds. refuse at 20 cents	2.15

604

Feb. 3.	To incinerating	1 load	8	yds. refuse at 20 cents	1.60
Feb. 4.	To incinerating	1 load	10½	yds. refuse at 20 cents	2.10
Feb. 4.	To incinerating	1 load	7½	yds. refuse at 20 cents	1.50
Feb. 4.	To incinerating	1 load	9½	yds. refuse at 20 cents	1.85
Feb. 4.	To incinerating	1 load	4½	yds. refuse at 20 cents	.95
Feb. 5.	To incinerating	1 load	10½	yds. refuse at 20 cents	2.15
Feb. 5.	To incinerating	1 load	10½	yds. refuse at 20 cents	2.15
Feb. 5.	To incinerating	1 load	3½	yds. refuse at 20 cents	.65
Feb. 5.	To incinerating	1 load	6½	yds. refuse at 20 cents	1.35
Feb. 7.	To incinerating	1 load	8	yds. refuse at 20 cents	1.60
Feb. 7.	To incinerating	1 load	5½	yds. refuse at 20 cents	1.05
Feb. 7.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 8.	To incinerating	1 load	7½	yds. refuse at 20 cents	1.50
Feb. 8.	To incinerating	1 load	7½	yds. refuse at 20 cents	1.50
Feb. 8.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 8.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 8.	To incinerating	1 load	7½	yds. refuse at 20 cents	1.50

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Feb. 9.	To incinerating	1 load	10	yds. refuse at 20 cents	1.00
Feb. 9.	To incinerating	1 load	9	yds. refuse at 20 cents	1.00
Feb. 9.	To incinerating	1 load	7½	yds. refuse at 20 cents	1.50
Feb. 9.	To incinerating	1 load	7½	yds. refuse at 20 cents	1.50
Feb. 10.	To incinerating	1 load	4	yds. refuse at 20 cents	1.50
Feb. 10.	To incinerrting	1 load	6½	yds. refuse at 20 cents	.80
Feb. 10.	To incinerating	1 load	10	yds. refuse at 20 cents	1.35
Feb. 10.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 11.	To incinerating	1 load	6½	yds. refuse at 20 cents	2.00
Feb. 11.	To incinerating	1 load	10	yds. refuse at 20 cents	1.35
Feb. 11.	To incinerating	1 load	7½	yds. refuse at 20 cents	2.00
Feb. 12.	To incinerating	1 load	8	yds. refuse at 20 cents	1.50
Feb. 12.	To incinerating	1 load	10	yds. refuse at 20 cents	1.50
Feb. 12.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 14.	To incinerating	1 load	9	yds. refuse at 20 cents	2.00
Feb. 14.	To incintrating	1 load	6½	yds. refuse at 20 cents	1.50
Feb. 14.	To incinerating	1 load	4	yds. refuse at 20 cents	1.50

606

Feb. 14.	To incinerating	1 load	7½	yds. refuse at 20 cents	.80
Feb. 15.	To incinerating	1 load	9	yds. refuse at 20 cents	1.45
Feb. 15.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 15.	To incinerating	1 load	8	yds. refuse at 20 cents	1.80
Feb. 15.	To incinerating	1 load	9	yds. refuse at 20 cents	1.60
Feb. 16.	To incinerating	1 load	5	yds. refuse at 20 cents	1.80
Feb. 16.	To incinerating	1 load	9	yds. refuse at 20 cents	1.00
Feb. 16.	To incinerating	1 load	8	yds. refuse at 20 cents	1.80
Feb. 16.	To incinerating	1 load	10	yds. refuse at 20 cents	1.80
Feb. 17.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 17.	To incinerating	1 load	9	yds. refuse at 20 cents	2.00
Feb. 17.	To incinerating	1 load	5	yds. refuse at 20 cents	1.00
		57 loads	466½	yds.	99.45
				Jan. balance..	32.35
					131.80

607

	Brought forward..	57 loads	466½	yds.	$131.80
Feb. 17.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 18.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 18.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 18.	To incinerating	1 load	7	yds. refuse at 20 cents	1.40
Feb. 18.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 19.	To incinerating	1 load	8	yds. refuse at 50 cents	1.40
Feb. 19.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 19.	To incinerating	1 load	8	yds. refuse at 20 cents	1.60
Feb. 21.	To incinerating	1 load	6½	yds. refuse at 20 cents	1.35
Feb. 21.	To incinerating	1 load	8	yds. refuse at 20 cents	1.60
Feb. 21.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 21.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 22.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 22.	To incinerating	1 load	10	yds. refure at 20 cents	2.00
Feb. 23.	To incinerating	1 load	8	yds. refuse at 20 cents	1.60
Feb. 23.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80

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Feb. 24.	To incinerating	1 load	7	yds. refuse at 20 cents	1.40
Feb. 24.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 24.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 24.	To incinerating	1 load	6½	yds. refuse at 20 cents	1.35
Feb. 25.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 25.	To incinerating	1 load	6½	yds. refuse at 20 cents	1.35

Feb. 25.	To incinerating	1 load	9	yds. refuse at 20 cents	1.80
Feb. 26.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 26.	To incinerating	1 load	8	yds. refuse at 20 cents	1.60
Feb. 26.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 28.	To incinerating	1 load	8	yds. refuse at 20 cents	1.60
Feb. 28.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
Feb. 28.	To incinerating	1 load	6½	yds. refuse at 20 cents	1.30
Feb. 28.	To incinerating	1 load	10	yds. refuse at 20 cents	2.00
		87 loads	726		$173.50

Received payment,

609 (Endorsed:) U. S. circuit court, N. dist. of Cal. Sanitary Reduct'n Works of S. F. *vs.* Cal. Reduct'n Co. *et al.* No. 12,714. Respondents' No. Barge Co.'s Exhibit. E. H. H. examiner. U. S. circuit court, N. dist. of Cal. Sanitary Reduction Works of San Francisco, *vs.* Cal. Reduction Co. *et al.* Respondents' Exhibit 11. E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

Respondents' Exhibit No. 2.

(Copy of Memorandum Book of Pages 3, 4, 5, 6, 7, 8 and 9 Thereof.)

Wea. Sun. April 1, 1899. Ther.

Scavenger wagon
old number 17718
new number 13
owned by L. Ferrari.

Wea. Monday 3 Ther.

75
and
2 yards quate

Wea. Tuesday 4 Ther.

75
2 yards

Wea. Wed. April 5, 1899. Ther.

65
2 yards

610 Wea. Thursday 6 Ther.

100
3 yards

Wea. Friday 7 Ther.

85
2 yards half

Wea. Sat. April 8, 1899. Ther.
60 cents
1 yards 3 quo
55 cents
1 yards half

Wea. Sunday 9 Ther.

Wea. Monday 10 Ther.
90 cts.
2 yards and half

Wea. Tues. April 11, 1899. Ther.
75 cts.
two yards
65 cts.
1 yards half.

Wea. Wednesday 12 Ther.
55 cts.
1 yard half

Wea. Thursday 13 Ther.
85 cts.
2 yards half

611 Wea. Fri. April 14, 1899, Ther.
75
2 yards and qr.

Wea. Saturday 15 Ther.
90
2 yards half
85
2 yards qu.

Wea. Sunday 16 Ther.

Wea. Mon. April 17, 1899 Ther.
65 cts.
2 yards

Wea. Tuesday 18 Ther.
70 cts.
2 yards

Wea. Wednesday 19 Ther.
75
2 yards qu.

Wea.	Thur. April 20, 1899,	Ther.
	75	
	2 yards qu.	
Wea.	Friday 21	Ther.
	2 yards 65	
Wea.	Saturday 22	Ther.
	2 yards 65	
	1¾ yards 60	

612 (Endorsed:) U. S. circuit court, N. dist. of Cal. Sanitary Reduction Works of San Francisco *et al. vs.* Cal. Reduction Co. *et al.* No. 12,714. Respondents' Exhibit No. 2. E. H. H., examiner. Published by order of court and filed Jan. 3, 1900. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

RESPONDENTS' EXHIBIT No. 3; ALSO RESPONDENTS' EXHIBIT No. 26.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco. } *ss:*

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify that I am now, and have been for more than ten years last past, the duly elected, qualified and acting clerk of the board of supervisors of the city and county of San Francisco, State of California.

613 I further certify that the following is a true copy of a certain resolution of the board of supervisors of the city and county of San Francisco, State of California, duly adopted and passed by the said board on the 18th day of November, 1895, and marked resolution No. 13,231 (third series).

Beginning of Exhibit 26. E. H. H.

Resolution No. 13,231 (third series). Whereas, application has heretofore been made to this board by various persons for a franchise for the term of fifty years, for the sole right and privilege to cremate garbage, house refuse, dead animal and putrid vegetable matter and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjec-

tionable, and to convert the same, or a portion thereof, into fertilizing matter or other substances, free of all cost or charges to said city and county; therefore, be it

Resolved, That the clerk of this board be and he is hereby directed to advertise for proposals for the sale of a franchise conferring the rights and privileges as specified in and under the provisions of the following proposed order, and in compliance with the requirements of an act of the legislature entitled "An act providing for the sale of railroad and other franchises in municipalities and relative to granting of franchises" (approved March 23, 1893). Said advertisements to recite the fact that the board intends to award a franchise to the highest bidder therefor, and said clerk is hereby directed in said advertisement to require the bidders to state in their bids:

614 First. The general character and capacity of the works proposed to be erected and their probable or estimated cost.

Second. The amount offered for the franchise under the conditions expressed in the annexed order (it being understood that no bid will be received or entertained unless the amount of one thousand dollars or over is bid therefor, and unless a certified check for the amount bid, payable to the clerk of the board, accompany the said bid.)

And said clerk is further directed to state in said advertisement that if the franchise is awarded on a bid and the successful bidder fail to accept the franchise, as provided in said proposed order, or fail to construct or have in operation the works required, within the time agreed upon, such failure shall work a forfeiture of the franchise granted, which shall, by reason of said failure, become null and void and of no effect.

The following is the proposed order above referred to, the number of the order, the names of the successful bidders and the amount bid being left blank:

Order No. —.

Granting to —— —— their associates and assigns, the sole right and privilege to cremate garbage, house refuse, dead animal and putrid vegetable matter and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same, or a portion thereof, into fertilizing matter and other substances, free of all cost or charge to said city and county, and making certain violations of this order misdemeanors.

615 Whereas, the disposal of house refuse, butchers' offal, garbage, putrid or stinking animal or vegetable matter, refuse, ashes or other like matter, by cremation, or by some process of chemical reduction, is the only effective means to dispose of the same to prevent the said matter and material from being deposited

in or upon lots, lands and public streets situate in the city and county or in the waters of the bay, as heretofore, to the prejudice of the public health; and

Whereas, under the provisions of an act of the legislature entitled "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises" (approved March 23, 1893), bids for a franchise were duly called for; and

Whereas, —— —— were the highest and best bidders for the said franchises, as hereinafter recited, and all the forms and requirements of law necessary thereto being complied with; now, therefore,

The people of the city and county of San Francisco, do ordain as follows:

In consideration of —, the franchise hereinafter recited is hereby granted to —— ——, their associates and assigns.

SECTION 1. The sole and exclusive right and privilege is hereby conferred upon and granted to —— ——, their associates and assigns, for a term of fifty years from and after the approval of this order, to cremate and destroy within the city and county aforesaid, by crematories of by a process of reduction, house refuse, butchers'
offal, garbage, refuse, dirt, ashes, cinders, sludge, crockery,
616 tins, bones and other like matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted), and putrid vegetable matter and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and the said grantees, their associates and assigns, shall have the right and privilege to charge and collect therefor not exceeding the sum of twenty cents per load, such load not to exceed a cubic yard, on the delivery of the above material or substances at the plant or works where the crematory or reduction plant is established.

SECTION 2. The grantees, their associates and assigns, shall, within a period of twenty-four (24) months after the granting of this franchise, unless the time is extended therefor by this board, have fully erected and constructed and in operation a suitable building or buildings, and equip, fit up and install the same with the necessary crematories, machinery, tools and appliances required to cremate and destroy by cremation, or by a process of reduction all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, and any dead animal and putrid vegetable matter, and fish, flesh and food condemned by the board of health as unfit for human food.

SECTION 3. From and after the erection and construction of the buildings referred to in section 2 of this order, it shall be unlawful for any person or corporation to remove through the public streets from any houses, hotels, markets, hospitals, factories, restaurants,
stores or any other like building or place in this city and
617 county any refuse, butchers' offal, garbage, dirt, ashes, cinders, sludge, crockery, tins, bones or other like matter, or any

putrid animal or vegetable matter, or any fish, flesh, or food not
demned by the board of health as unfit for human food, or dea
animals whose removal is not otherwise provided for by contract o
franchise heretofore granted unless the same shall be remove
through said public streets in closed vehicles and wagons constructe
so as to conceal the contents from public view, and to effectuall
prevent any smell escaping therefrom, as well as to prevent the dro
ping of any portion of such material or substances on or upon th
public streets, and which said vehicles and wagons shall be con
structed in accordance with specifications approved by the board o
health of said city and county.

SECTION 4. From and after the erection and construction of th
buildings referred to in section 2 of this order, it shall be unlawfu
for any person or corporation to dump or place upon any lan
within said city and county, or in any water or waterways within
said city and county, any refuse, butchers' offal, garbage, or other ma
terial mentioned in section 3 of this order, but such refuse, butchers
offal, garbage and other material shall be forthwith delivered to the
crematory herein provided for, and there, at the expense of the per
son or corporation so conveying the same, be cremated or destroyed
or subjected to such disposition and treatment as will at once secure
and effect a complete combustion of all gases and odors arising
therefrom.

SECTION 5. The said grantees, their associates and assigns
618 on receipt of any of the material or substances specified in
this order, shall within twenty-four (24) hours thereafter cre-
mate or reduce the same, or shall subject the same to such process
as will secure the complete combustion of all gases or odors arising
therefrom. The said grantees, their associates and assigns, shall
maintain and operate their plant and crematory or crematories, or
other apparatus and the matter and substances received so as to pre-
vent any obnoxious smells or gases being emitted either from the
deposits of such matter or substances on their premises or from the
process of cremation or other treatment thereof, or from the residuum
remaining after cremation or treatment as aforesaid; also, that in
the operation of said works no smoke or soot shall be emitted so as
to constitute a nuisance.

SECTION 6. The said grantees, their associates and assigns, shall
from and after the first day of December, 1902, have the sole and
exclusive right and privilege during the continuance of the re-
mainder of the term of this franchise to remove and dispose of the
carcasses of all dogs killed at the public pound, and all animals im-
pounded and not redeemed by the owners thereof, and which are
valueless and cannot be sold; also, to remove and dispose of the car-
casses of all dead animals found upon the public streets, and the
carcasses of all dead animals in said city and county not slain for
human food, which shall not be removed and disposed of by the own-
ers thereof so as not to become a nuisance within six hours after
the death of the same; provided that in the event of the parties now

holding and exercising this privilege or removing the dead animals not slain for human food should hereafter fail or refuse to remove the dead animals and should forfeit their contract with said city and county, then immediately upon such forfeiture the right to remove said dead animals shall vest in the grantees herein, their associates and assigns, under this order.

SECTION 7. This board will pass such orders as may be required from time to time to enable the said grantees, their associates and assigns, to enjoy and have the benefit of all the rights and privileges herein granted, and on the completion of the works will pass such other and additional orders as will enable the said grantees, their associates and assigns, to carry out the contemplated destruction of garbage, offal, house refuse and material mentioned in this order, and the conversion of the substances herein named for fertilizing and other purposes, and for the segregation prior to delivery of garbage and offal from ashes and other refuse.

SECTION 8. The said grantees, their associates and assigns, shall at all times be subject to and conform to all health and sanitary regulations and requirements enacted and in force during the existence of this franchise. The said grantees, their associates and assigns, shall receive no compensation whatever from the city and county for any service performed under the conditions of this order in disposing of the material and substances specified in this order.

SECTION 9. This franchise shall cease and determine upon the failure of the grantees, their associates and assigns, to fully carry out and faithfully perform the obligation herein imposed unless from unavoidable cause beyond the control or power of the grantees, their associates and assigns, by reason of any fire or other casualty, the operations and works shall be destroyed or temporarily suspended in their operation. The said grantees, their associates and assigns, in the event of an accident to or destruction of their works, shall, during the time such works cannot be operated, and until said works are repaired or reconstructed and within such reasonable time as may be allowed and approved by this board, shall deodorize the material and substances specified in this order and dispose of the same as directed by this board, so as to prevent all noxious gases or odors escaping therefrom, until the said material or substances are cremated or utilized as provided by this order.

SECTION 10. All of the machinery and appliances used shall be of California manufacture, except such as are manufactured exclusively or patented in the Eastern States or abroad.

SECTION 11. The said grantees, their associates and assigns, shall, within a period of ten days from the date of the approval of this order, file with the clerk of this board their acceptance of its provisions and of this franchise.

SECTION 12. Any violation of the provisions of sections 3 and 4 of this order shall be and are hereby declared to be a misdemeanor, and punishable as such.

SECTION 13. This order shall take effect and be in force on and from its passage.

All orders or parts of orders in conflict with the provisions of this order are hereby repealed and made null and void.

621 And the clerk is hereby directed to advertise this resolution as required by law.

In Board of Supervisors, San Francisco, November 13, 1899.

Adopted by the following vote:

Ayes—Supervisors King, Scully, Benjamin, Hirsch, Dimond, Hughes, Dunker, Taylor, Morgenstern, Spreckels, Hobbs, Wagner.

JNO. A. RUSSELL, Clerk.

End of Exhibit 26.—E. H. H.

I further certify that the foregoing is the resolution introduced in evidence on behalf of respondents in the above entitled action as Respondents' Exhibit 3, and to be so marked.

In witness whereof, I have hereto signed my name as clerk of said board of supervisors (having no seal of office) this 20th day of December, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.
By F. A. ELLIOTT, Deputy Clerk.

(Endorsed:) Respondents' Exhibit 3, also Respondents' Exhibit 26. E. H. H., examiner. Published by order of court and filed Jan. 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

622 RESPONDENTS' EXHIBIT No. 5, ALSO RESPONDENTS' EXHIBIT No. 30.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } ss:

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify that I am now and have been for more than ten (10) years last past

the duly elected, qualified and acting clerk of the board of supervisors of the city and county of San Francisco, State of California.

I further certify that the following is a true copy of the proposal of L. V. Merle received by the said board of supervisors on January 6th, 1896, for the franchise to cremate garbage for a term of fifty (50) years, pursuant to resolution No. 13,231 (third series) of the
623 said board, the same having been introduced in evidence in the above-entitled action on behalf of respondents, and marked 'Respondents' Exhibit No. 5."

"SAN FRANCISCO, Jan. 6, 1896.

To the honorable board of supervisors of the city and county of San Francisco.

GENTLEMEN: Pursuant to resolution No. 13,231 (third series), herewith annexed, I hereby offer to build crematories required by said resolution, of the capacity satisfactory to the board of supervisors, the probable cost of which will be in the neighborhood of one hundred thousand dollars ($100,000), and with a capacity to cremate at least three hundred (300) tons per day.

The general character and capacity of the works to be erected will be as those used in Philadelphia, Detroit and Washington, and for the sole privilege of cremating refuse, butchers' offal, garbage or other material mentioned in section 3 of the above referred order.

I hereby bid for the franchise referred to in said order the sum of fifty-five hundred dollars ($5,500), for which amount I herein inclose my certified check.

Respectfully, L. V. MERLE."

Attached to the said proposal were and are a copy of the said resolution No. 13,231 (third series) at length, and also a copy of the notice as published by the said board inviting proposals for the said franchise. The whole was endorsed as follows:

"Proposal of L. V. Merle for franchise for cremation of garbage, received Jan'y 6, 1896, Jan. 31, 1896. In favor of awarding
624 to L. V. Merle, he being in the opinion of the committee the highest and best bidder. Prepare order."

In witness whereof, I have hereto signed my name as clerk of said board of supervisors (having no seal of office), this 1st day of June, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the
City and County of San Francisco.

(Endorsed:) Certificate of John A. Russell, Respondents' Exhibit No. 5. Also Respondents' Exhibit No. 30. E. H. H., examiner. L. V. Merle's bid. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

625 RESPONDENTS' EXHIBIT No. 6; ALSO RESPONDENTS' EXHIBIT No. 29.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } ss:

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify that I am now and have been for more than ten (10) years last past, the duly elected, qualified and acting clerk of the board of supervisors of the city and county of San Francisco, State of California.

I further certify the following is a true copy of the proposal of F. E. Sharon received by the said board of supervisors on January 6th, 1896, for the franchise to cremate garbage for a term of fifty (50) years, pursuant to resolution number 13,231 (third series) of the said board, the same having been introduced in evidence in the above-entitled action on behalf of respondents, and marked "Respondents' Exhibit No. 6."

626

SAN FRANCISCO, CAL., January 6, 1896.

To the honorable board of supervisors of the city and county of San Francisco.

GENTLEMEN: The undersigned hereby tenders the following proposal for the franchise for the cremation of garbage under proposals called for by your honorable board, and in conformity with the provisions of an act of the legislature if the State entitled "An act providing for the sale of railroad and other franchises in municipalities and relative to granting of franchises," approved March 23, and as required, hereby submit a certified check, payable to the clerk of your honorable board, for the sum of $2,510, which said clerk is hereby empowered to draw and pay the same into the city and county treasury if I am the highest bidder, the bid being as follows, in strict conformity with your advertisement, a copy of which is hereby attached and made a part hereof, to wit:

For the franchise, the sum of..... $2,510.00

In addition I will agree to pay a per centage into the city and county treasury on the gross annual receipts during the continuance of the franchise, as follows:

For the first 15 years, each year..... 2%
For each and every succeeding year..... 5%

627 The general character and capacity of the works will be of the most approved pattern and subject to your approval, and they will have a capacity, when first put in operation, for cremating 250 tons of garbage, etc., daily, and the estimated cost will exceed $100,000.

Very respectfully, F. E. SHARON."

Attached to the said proposal was a copy of the notice as published by the said board, inviting proposals for the said franchise. The whole was endorsed as follows:

"Proposal of F. E. Sharon for franchise for cremation of garbage. Received January 6, 1896. H. P."

In witness whereof, I have hereto signed my name as clerk of said board of supervisors (having no seal of office) this 1st day of June, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco.

(Endorsed:) Certificate of John A. Russell. Respondents' Exhibit No. 6. Also respondents' Exhibit No. 29. E. H. H., examiner. F. E. Sharon's bid. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

628 RESPONDENTS' EXHIBIT No. 7; ALSO RESPONDENTS' EXHIBIT No. 28.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } ss:

I, John A. Russell, clerk of the board of supervisors of the city and county and San Francisco, State of California, do hereby certify that I am now and have been for more than ten (10) years last past, the

duly elected, qualified and acting clerk of the board of supervisors of the city and county of San Francisco, State of California.

I further certify that the following is a true copy of the proposal of A. M. Skelly received by the said board of supervisors on January 6th, 1896, for the franchise to cremate garbage for a term of fifty (50) years, pursuant to resolution No. 13,231 (third series) of the
629 said board, the same having been introduced in evidence in the above-entitled action on behalf of respondents, and marked "Respondents' Exhibit No. 7."

"SAN FRANCISCO, January 6, 1896.

To the honorable board of supervisors of the city and county of San Francisco.

GENTLEMEN: On condition that I obtain the franchise for the cremation of garbage under this bid for the term of fifty years, as called for by your daily published notice inviting proposals, my bid is as follows:

For franchise as advertised, the sum of	$1,105.00
On the gross annual receipts for the first fifteen (15) years a percentage of	1%
On the gross annual receipts of the second period of fifteen (15) years	2%
On the gross annual receipts for each and every year thereafter	3%

A certified check for the sum of $1,105 is herewith inclosed, payable to the clerk of your honorable board.

Respectfully submitted,

A. M. SKELLY."

(Endorsed:) "Proposal of A. M. Skelly for franchise for cremation of garbage. Received January 6th, 1896."

In witness whereof, I have hereto signed my name as clerk of said board of supervisors (having no seal of office), this 1st day of June 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the
City and County of San Francisco.

630 (Endorsed:) Certified of John A. Russell. Respondent's Exhibit No. 7, also Respondents' Exhibit No. 28. E. H. H., examiner. A. M. Skelly's bid. Published by order of the court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

RESPONDENTS' EXHIBITS Nos. 9, 27, 35, 4, 8.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } ss:

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify that I am now and have been for more than ten (10) years last past, the duly elected, qualified and acting clerk of the board of supervisors of the city and county of San Francisco, State of California.

I further certify that the following is a true copy of all that appears in the official publication known as and entitled "San
631 Francisco Municipal Reports" for the fiscal year 1895 and 1896, ending June 30, 1896, published by order of the said board of supervisors, and in the appendix thereof beginning with the words, "On November 18, 1895, the committee on health and police reported" on page 179 thereof, including all the balance of page 179; all of page 180, all of page 181, all of page 182, all of page 183, all of page 184, and down to and inclusive of the words, "Following is a copy of the decision filed March 17, 1896," on page 185 thereof; the same being that portion of the said Municipal Reports of 1895 and 1896 introduced in evidence in the above-entitled action on behalf of respondents, and marked "Respondents' Exhibit No. 9."

On November 18, 1895, the committe- on health and police reported, in the matter of an application of A. M. Skelly for a franchise to cremate garbage for a term of fifty years, that a form of order had been prepared for submission to and approval of the board, under which competitive bids would be received. At the same meeting the committee introduced a resolution containing a form of order embodying the conditions under which bids would be received for a franchise for a term of fifty years, and in which the price to be charged and collected was fixed at not to exceed twenty cents per cubic yard for garbage, etc., delivered at the works for cremation or reduction, which was adopted by the board and numbered 13,231 (third series).

632 The following is a copy of the notice published as required by law, inviting proposals for the franchise, to be received in open session of the board on Monday afternoon, January 6, 1896, to wit:

Franchise for the Cremation of Garbage for Sale.

CLERK'S OFFICE, BOARD OF SUPERVISORS,
SAN FRANCISCO, November 26, 1895.

Whereas, application has heretofore been made to this board by various persons for a franchise for the term of fifty years for the sole right and privilege to cremate garbage, house refuse, dead animals and putrid vegetable matter and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same, or a portion thereof, into fertilizing matter or other substances, free of all cost or charge to said city and county; and,

Whereas, it is the intention of the said board of supervisors to grant such a franchise for a term of fifty (50) years, under terms and conditions, expressly set forth in an order incorporated in resolution No. 13,231 (third series) of this board, which can be obtained upon application to this office;

Now, therefore, pursuant to the provisions of said resolution No. 13,231 (third series), whereby the clerk is directed to advertise for proposals from persons wishing to purchase said franchise and in accordance with the provisions of the act of the legislature entitled,

"An act providing for the sale of railroad and other fran-
633 chises in municipalities, and relative to granting of franchise," approved March 23, 1893, public notice is hereby given that it is proposed to grant the said franchise.

Bids for said franchise will be received in open session of the board of supervisors on Monday afternoon, January 6, 1896, from 3 to 3:30 o'clock.

All bids must be subject to the conditions and in accordance with the provisions of the forms of the franchise, as embodied in resolution No. 13,231 (third series).

Notice.—Bidders are required to state:

First. The general character and capacity of the works proposed to be erected and their probable or estimated cost.

Second. The amount offered for the franchise, under the conditions expressed in the annexed order (it being understood that no bid will be received or entertained, unless the amount of one thousand dollars or over is bid therefor, and unless a certified check for the amount bid, payable to the clerk of the board, accompany the said bid.

Further: Bidders will estimate with the express understanding that if the franchise is awarded on a bid, and the successful bidder fails to accept the franchise, as provided in said proposed order, or fails to construct or have in operation the works required, within the time agreed upon, such failure shall work a forfeiture of the franchise granted, which shall, by reason of said failure, become null and void and of no effect.

634 No bid for the franchise herein referred to and offered for sale will be received or considered unless accompanied by a certified check, as aforesaid, payable to said clerk, which check must be in and for the amount bid, and on the granting of said franchise to the highest bidder the check accompanying said bid shall be collected by said clerk and paid into the city and county treasury to the credit of the general fund.

JNO. A. RUSSELL, Clerk.

At which meeting three proposals were received, accompanied by certified checks on the respective amounts bid, as follows:

L. V. Merle—$5,500 for the franchise.

F. E. Sharon—$2,510 for the franchise; also, two per cent. per year on the annual gross receipts for the first fifteen years, and each succeeding year five per cent. of the gross receipts.

A. M. Skelly—$1,105 for the franchise; also, one per cent. per year on gross receipts for the first fifteen years, two per cent. per year for the next ten years, and three per cent. per year for each year thereafter during continuance of franchise.

The following are copies of the proposals received:

Proposal of L. V. Merle.

SAN FRANCISCO, January 6, 1896.

To the honorable the board of supervisors of the city and county of San Francisco.

GENTLEMEN: Pursuant to resolution No. 12,231 (third series), herewith annexed, I hereby offer to build crematories required
635 by said resolution, of the capacity satisfactory to the board of supervisors, the probable cost of which will be in the neighborhood of one hundred thousand dollars ($100,000), and with a capacity to cremate at least three hundred (300) tons per day.

The general character and capacity of the works to be erected will be as those used in Philadelphia, Detroit and Washington, and for the sole privilege of cremating refuse, butchers' offal, garbage and other material mentioned in section 3 of the above-referred to order.

I hereby bid for the franchise referred to in said order the sum of fifty-five hundred dollars ($5,500), for which amount I herein inclose my certified check.

Respectfully,

L. V. MERLE.

Proposal of F. E. Sharon.

SAN FRANCISCO, CAL., January 6, 1896.

To the honorable the board of supervisors of the city and county of San Francisco.

GENTLEMEN: The undersigned hereby tenders the following proposal for the franchise for the cremation of garbage under proposals

called for by your honorable board, and in conformity with the provisions of an act of the legislature of the State entitled "An act providing for the sale of railroad and other franchises in municipalities and relative to granting franchises," approved March 23, 1893, and, as required hereby submit a certified check payable to the clerk of your honorable board, for the sum of $2,510, which said clerk
636 is hereby empowered to draw and pay the same into the city and county treasury if I am the highest bidder, the bid being as follows, in strict conformity with your advertisement, a copy of which is hereby attached and made a part hereof, to wit:

For the franchise, the sum of..... $2,510.00

In addition I will agree to pay a percentage into the city and county treasury on the gross annual receipts during the continuance of the franchise, as follows:

For the first fifteen years, each year..... 2 per cent.
Each and every succeeding year..... 5 per cent.

The general character and capacity of the works will be of the most approved pattern and subject to your approval, and they will have a capacity, when first put in operation, for cremating 250 tons of garbage etc., daily, and the estimated cost will exceed $100,000.

Very respectfully,

F. E. SHARON.

Proposal of A. M. Skelly.

SAN FRANCISCO, CAL., January 6, 1896.

To the honorable the board of supervisors of the city and county of San Francisco.

GENTLEMEN: On condition that I obtain the franchise for the cremation of garbage under this bid for the term of fifty years, as called for by your duly published notice inviting proposals, my bid is as follows:

For the franchise as advertised, the sum of..... $1,105.00
On the gross annual receipts for the first fifteen (15) years a percentage of..... 1 per cent.
637 On the gross annual receipts for the second period of fifteen (15) years..... 2 per cent.
On the gross annual receipts for each and every year thereafter..... 3 per cent.

A certified check for the sum of $1,105 is herewith inclosed, payable to the clerk of your honorable board.

Respectfully submitted,

A. M. SKELLY.

The proposals received were referred to the committee on health and police; the said committee on February 3, 1896, reported in favor of awarding to L. V. Merle the franchise for the cremation, etc., of garbage he being, in the opinion of the committee, the highest and best bidder. The committee at the same meeting introduced an order so awarding the franchise, which was, on motion of Supervisor Dimond, laid over for one week. At the next meeting of the board, held on February 10, 1896, the order so awarding the franchise was again laid over one week on motion of Supervisor King.

At the meeting of the board held on February 17, 1896, the order purporting to grant the franchise to L. V. Merle was taken up. Thereupon, on motion of Supervisor Dimond, a substitute order granting the franchise to F. E. Sharon was adopted and numbered 2,965, Supervisors Benjamin, Hughes, Dunker and Wagner voting against the passage of the said order.

The following is a copy of the order granting the franchise to F. E. Sharon his associates and assigns:

Order No. 2965. Granting to F. E. Sharon, his associates
638 and assigns, the sole right and privilege to cremate garbage, house refuse, dead animals and putrid vegetable matter and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same, or a portion thereof, into fertilizing matter and other substances, free of all cost or charge to said city and county and making certain violations of this order misdemeanors.

Whereas, the disposal of house refuse, butchers' offal, garbage, putrid or stinking animal or vegetable matter, refuse, ashes or other like matter, by cremation, or by some process of chemical reduction, is the only effective means to dispose of the same to prevent the said matter and material from being deposited in or upon lots, lands and public streets situate in the city and county or in the waters of the bay, as heretofore, to the prejudice of the public health; and

Whereas, under the provisions of an act of the legislature entitled "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises" (approved March 23, 1893), bids for a franchise were duly called for; and

Whereas, F. E. Sharon was the highest and best bidder for the said franchise, as hereinafter recited, and all the forms and requirements of law necessary thereto being complied with; now, therefore,

The people of the city and county of San Francisco do ordain as follows:

In consideration of the sum of twenty-five hundred and ten dollars, the receipt of which is hereby acknowledged, and in
639 consideration of the further payment of two per centum for the term of fifteen years from and after the date of this franchise, and the payment of five per centum for the remaining term of thirty-five years, on the gross amount of the receipts to be derived by the said F. E. Sharon, his associates or assigns, under this franchise, to be paid into the treasury of the city

and county of San Francisco each and every year during the continuance of this franchise, the franchise hereinafter recited is hereby granted to F. E. Sharon, his associates and assigns.

SECTION 1. The sole and exclusive right and privilege is hereby conferred upon and granted to F. E. Sharon, his associates and assigns, for a term of fifty years from and after the approval of this order, to cremate and destroy within the city and county aforesaid, by crematories or by process of reduction, house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted), and putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and the said grantees, their associates and assigns, shall have the right and privilege to charge and collect therefor not exceeding the sum of twenty cents per load, such load not to exceed a cubic yard, on the delivery of the above material or substances at the plant or works where the crematory or reduction plant is established.

640 SECTION 2. The grantees, their associates and assigns, shall, within a period of twenty-four (24) months after the granting of this franchise, unless the time is extended therefor by this board, have fully erected and constructed and in operation a suitable building or buildings, and equip, fit up and install the same with the necessary crematories machinery, tools and appliances required to cremate and destroy by cremation, or by a process of reduction, all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, and any dead animal and putrid vegetable matter, and fish, flesh and food condemned by the board of health as unfit for human food, the works to be constructed to cremate or reduce at least three hundred tons per day of the materials specified in this section, and the capacity to be increased as required from time to time.

SECTION 3. From and after the erection and construction of the building referred to in section 2 of this order, it shall be unlawful for any person or corporation to remove through the public streets from any houses, hotels, markets, hospitals, factories, restaurants, stores or any other like building or place in this city and county, any refuse, butchers' offal, garbage, dirt, ashes, cinders, sludge, crockery, tins, bones or other like matter, or any putrid animal or vegetable matter or any fish, flesh or food condemned by the board of health as unfit for human food, or dead animals whose removal is not otherwise provided for by contract or franchise hereto-

641 fore granted, unless the same shall be removed through said public streets in closed vehicles and wagons constructed so as to conceal the contents from public view, and to effectually prevent any smell escaping therefrom, as well as to prevent the dropping of any portion of such material or substances on or upon the public streets, and which said vehicles and wagons shall be con-

structed in accordance with specifications approved by the board of health of said city and county.

SECTION 4. From and after the erection and construction of the buildings referred to in section 2 of this order, it shall be unlawful for any person or corporation to dump or place upon any land within said city and county, or in any water or waterways within said city and county, any refuse, butchers' offal, garbage or other material mentioned in section 3 of this order, but such refuse, butchers' offal, garbage and other material shall be forthwith delivered to the crematory herein provided for, and there, at the expense of the person or corporation so conveying the same, be cremated or destroyed, or subjected to such disposition and treatment as will at once secure and effect a complete combustion of all gases and odors arising therefrom.

SECTION 5. The said grantees, their associates and assigns, on receipt of any of the material or substances specified in this order, shall within twenty-four (24) hours thereafter cremate or reduce the same, or shall subject the same to such process as will secure the complete combustion of all gases or odors arising therefrom. The said grantees, their associates and assigns, shall maintain and operate their plant and crematory or crematories, or other apparatus,
642 and the matter and substances received, so as to prevent any obnoxious smells or gases being emitted either from deposits of such matter or substances on their premises or from the process of cremation or other treatment thereof, or from the residuum remaining after cremation or treatment as aforesaid; also, that in the operation of said works, no smoke or soot shall be emitted so as to constitute a nuisance.

SECTION 6. The said grantees, their associates and assigns, shall from and after the first day of December, 1902, have the sole and exclusive right and privilege during the continuance of the remainder of the term of this franchise to remove and dispose of the carcasses of all dogs killed at the public pound, and all animals impounded and not redeemed by the owners thereof, and which are valueless and cannot be sold; also, to remove and dispose of the carcasses of all dead animals found upon the public streets, and the carcasses of all dead animals in said city and county not slain for human food, which shall not be removed and disposed of by the owners thereof so as not to become a nuisance within six hours after the death of the same; provided that in the event the parties now holding and exercising this privilege or removing the dead animals not slain for human food should hereafter fail or refuse to remove the dead animals and should forfeit their contract with said city and county, then immediately upon such forfeiture the right to remove said dead animals shall vest in the grantees herein, their associates and assigns under this order.

643 SECTION 7. This board will pass such orders as may be required from time to time to enable the said grantees, their associates and assigns, to enjoy and have the benefit of all the rights

and privileges herein granted, and on the completion of the work will pass such other and additional orders as will enable the said grantees, their associates and assigns, to carry out the contemplated destruction of garbage, offal, house refuse and material mentioned in this order, and the conversion of the substances herein named for fertilizing and other purposes, and for the segregation prior to delivery of garbage and offal from ashes and other refuse.

SECTION 8. The said grantees, their associates and assigns, shall at all times be subject to and conform to all health and sanitary regulations and requirements enacted and in force during the existence of this franchise. The said grantees, their associates and assigns, shall receive no compensation whatever from the city and county for any service performed under the conditions of this order in disposing of the material and substances specified in this order.

SECTION 9. This franchise shall cease and determine upon the failure of the grantees, their associates and assigns, to fully carry out and faithfully perform the obligations herein imposed, unless from unavoidable cause beyond the control or power of the grantees, their associates and assigns, by reason of any fire or other casualty, the operations and works shall be destroyed or temporarily suspended in their operation. The said grantees, their associates and assigns, in the event of an accident to or destruction of their works,
644 shall, during the times such woaks cannot be operated, and until said works are repaired or reconstructed, and within such reasonable time as may be allowed by this board, shall deodorize the material and substances specified in this order and dispose of the same as directed by this board, so as to prevent all noxious gases or odors escaping therefrom, until the said material or substances are cremated or utilized as provided by this order.

SECTION 10. All the machinery and appliances used shall be of California manufacture, except such as are manufactured exclusively or patented in the eastern States or abroad.

SECTION 11. The said grantees, their associates and assigns, shall, within a period of ten days from the date of the approval of the order, file with the clerk of this board their acceptance of its provisions and of this franchise.

SECTION 12. Any violation of the provisions of sections 3 and 4 of this order shall be and are hereby declared to be a misdemeanor, and punishable as such.

SECTION 13. This order shall take effect and be in force on and from its passage.

All orders or parts of orders in conflict with the provisions of this order are hereby repealed and made null and void.

And the clerk is hereby directed to advertise this order as required by law.

In Board of Supervisors, San Francisco, February 17, 1896.

645 Adopted by the following vote:
Ayes—Supervisors King, Scully, Hirsch, Dimond, Taylor, Morgenstern, Spreckels, Hobbs.
Noes—Supervisors Benjamin, Hughes, Dunker, Wagner.

JNO. A. RUSSELL, Clerk.

On February 20, 1896, A. M. Skelly withdrew the check filed with his proposal, and on February 25, 1896, L. V. Merle withdrew his check.

On February 18, 1896, the clerk of the board paid into the treasury of the city and county the sum of twenty-five hundred and ten ($2,510) dollars, being the amount bid and received from F. E. Sharon in cash for said franchise, in addition to the other consideration of percentage to be paid annually to the city and county on the gross annual receipts. On February 21, 1896, F. E. Sharon filed in writing a communication accepting the conditions and provisions of order No. 2,965 granting him a franchise for the disposal of garbage, etc.

The supreme court, in the case of Arthur D. Thompson *vs.* The Board of Supervisors of the County of Alameda, held that "the statute contemplates a cash sale, and a percentage of the gross receipts is in no sense cash."

The following is a copy of the decision, filed March 17, 1896:

I further certify that the said pages hereinbefore set forth contain a true and correct account of the actual proceedings had as
646 therein set forth in the matter of the granting by the said board of supervisors of the franchise to cremate garbage for a term of fifty (50) years.

In witness whereof, I have hereto signed my name as clerk of said board of supervisors (having no seal of office), this 31st day of May, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

(Endorsed:) Certificate of John A. Russell. Respondents' Exhibits No. 9 and 27 and 35 and 4 and 8. E. H. H., examiner. Published by order of court and filed Jan. 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

647 RESPONDENTS' EXHIBIT No. 10.

L. R. Ellert, President; A. Sbarboro, Secretary.

Sanitary Reduction Works of San Francisco.

MILLS BUILDING,
SAN FRANCISCO, CAL., March 1st, 1898.

M. D. Levenson, Esq., No. 120 Sutter St., city.

DEAR SIR: I enclose you herewith your bill to date, amounting to $173.50, a portion of which $28.25, is the balance of your account for January.

This bill I expect to have settled before Saturday, and in addition, I desire to notify you that commencing from Thursday, March 3rd, 1898, it will be necessary for you to furnish your drivers with sufficient funds to pay for each of your loads as they are delivered to the reduction works, as this company has decided that it will restrict itself to a cash business.

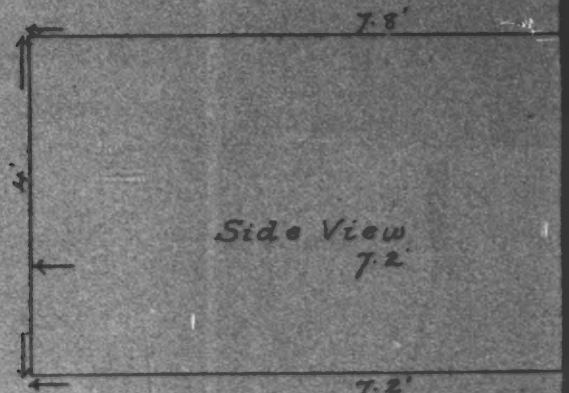
Yours truly, L. R. ELLERT.

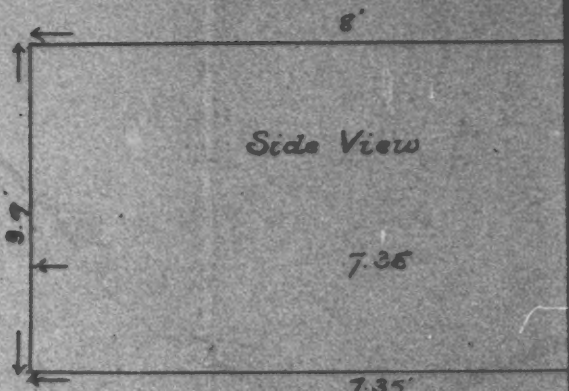
(Endorsed:) U. S. circuit court, N. dist. of Cal. Sanitary Reduction Works of San Francisco, vs. Cal. Reduction Co. et al. No. 12,714. Respondents' Exhibit 10. E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

(Here follows diagram marked p. 648.)

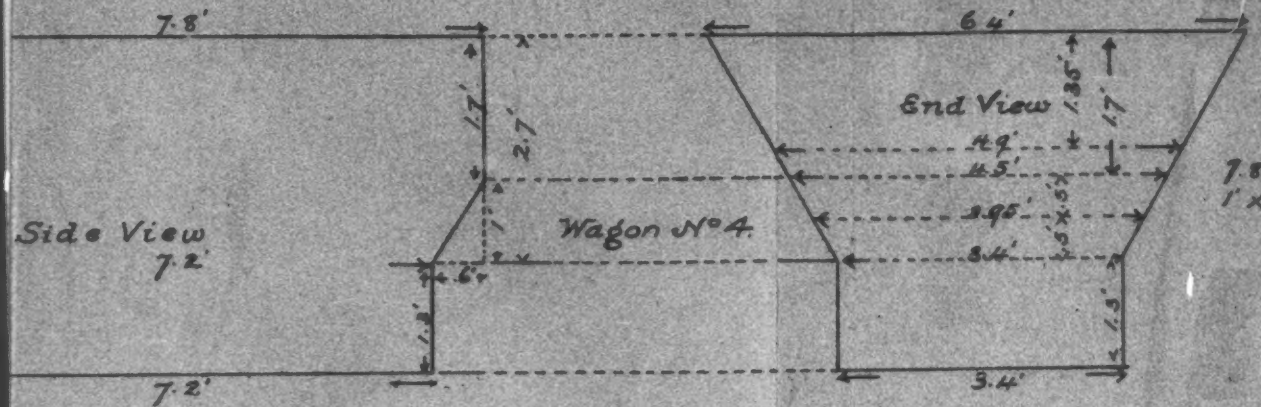
Respondents Exhi

No. 155.
Cal. Reduction
Co. et al.
v.
Sanitary Reduction
Works et al.
} pleas

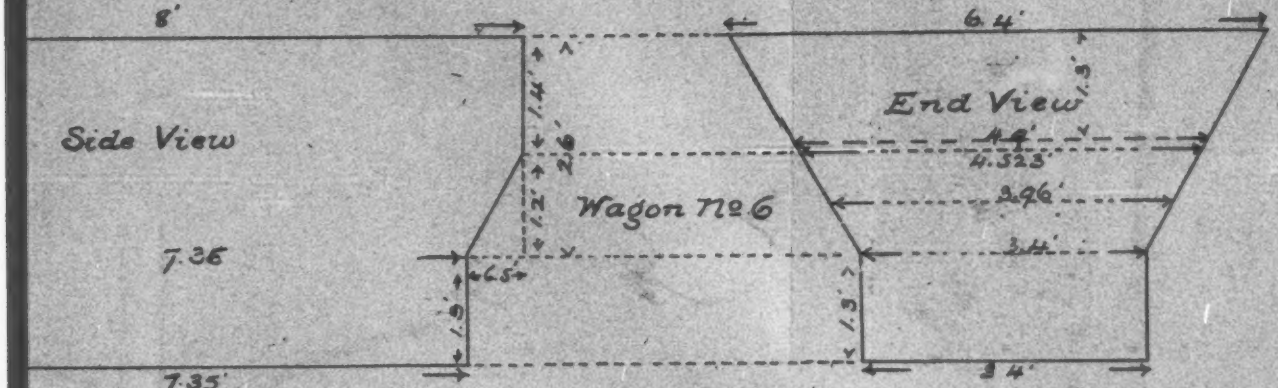




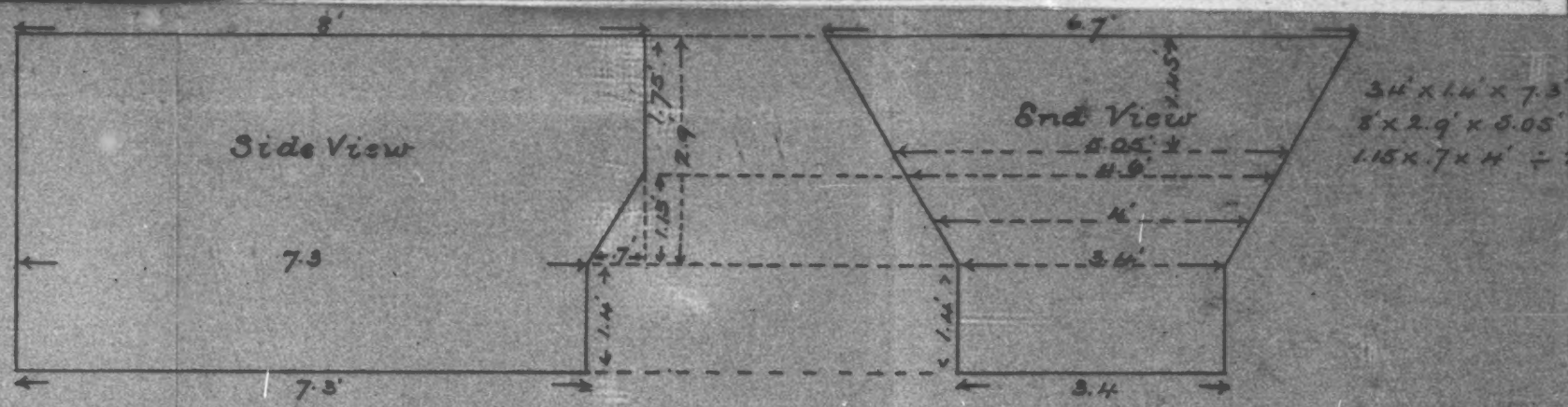
pondents Exhibit Nº 12.



3.4' × 1.3' × 7.2' = 31.824'
7.8' × 2.7' × 4.9' = 103.194
1' × 6' × 3.95' ÷ 2 = 1.185
102.009
27 | 133.833
4.956'+



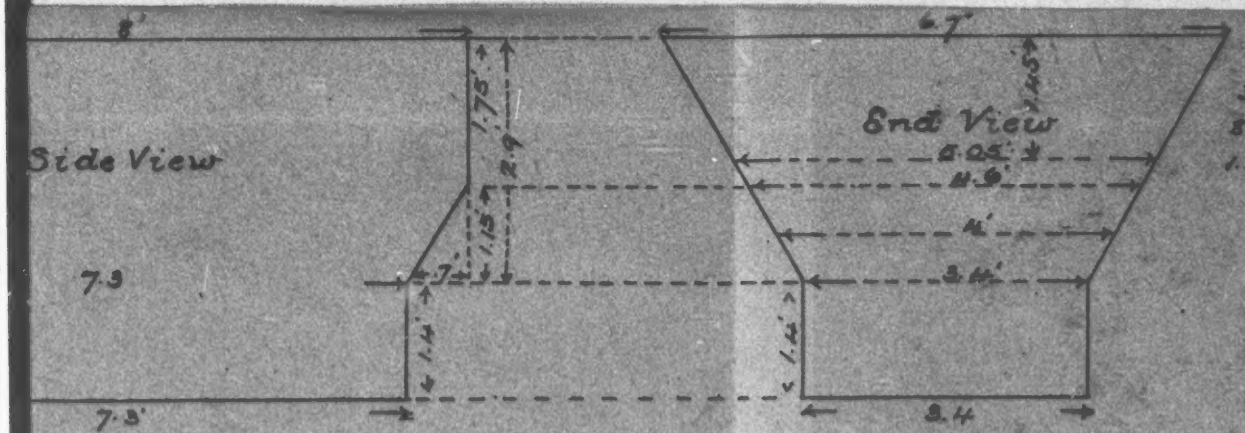
3.4' × 1.3' × 7.85' = 32.487
8' × 2.6' × 4.9' = 101.92
1.2' × .65' × 3.96' ÷ 2 = 1.544
100.376
27 | 132.863
4.91'+



U.S. Circuit Court N. Dist. of Cal.
Sanitary Reduction Works of San Fco
-vs-
Cal Reduct'n Co, et al.
Respondent's Exhibit. No. 12
E. H. H.
Examiner
No. 12714

Measurements and Computed Capacity of 3 Wagons of American Garbage Company as taken by R. F. Morton, Surveyor & Draughtsman. (120 Sutter St. San Francisco) Dec. 24th 1898.

Endorsed. No 12714
Published and Filed, by Order of Court.
January 3. 1901 Southard Hoffman Clerk.
By W. B. Bramley Deputy Clerk.



34' x 1.4' x 7.3' = 34 748
8' x 2.9' x 5.05' = 117.160
1.15 x .7 x 4' ÷ 2 = 1.66
110 500
27 | 150 248
5 57 +

Measurements and Computed Capacity of 8 Wagons of American Garbage Company as taken by R. F. Morton, Surveyor & Draughtsman. (120 Sutter St. San Francisco)

Dec. 24th 1898.

4
, by Order of Court;
Southard Hoffman Clerk.
B. Brainley Deputy Clerk.

RESPONDENTS' EXHIBIT No. 14.

the Superior Court, City and County of San Francisco, State of California.

JUNE 11TH, 1896.

Present: Hon. J. C. B. Hebbard, judge.

L. V. MERLE, Plaintiff,
vs.
BOARD OF SUPERVISORS OF SAN FRANCISCO ET AL., Defendants.
No. 54942.
Department 4.

This cause came on regularly this day for hearing, C. L. Tilden, Esq., appearing as counsel for plaintiff, and W. W. Foote, Esq., appearing as counsel for defendants, and Messrs. Pierson and Mitchell appearing as counsel for defendants; thereupon certain documentary evidence was introduced by plaintiff and plaintiff rests.

Thereupon E. McCullough and John A. Russell were sworn and examined on behalf of defendants, and after argument of counsel for plaintiff continued until June 13th, 1896.

I hereby certify the foregoing to be a full, true and correct copy of an order made, and entered on the minutes of said superior court, in the above-entitled cause, on the 11th day of June 1896, and now remaining of record in my office.

Attest, my hand and the seal of said superior court, this 29th day of May, 1899.

[SEAL.]

M. A. DEANE, Clerk,
By GEO. S. McCOMB,
Deputy Clerk.

(Endorsed:) U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Francisco, *et al. vs.* The Cal. Reduction Co., *et al.* No. 12,714. Respondents' Exhibit 14. E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

RESPONDENTS' EXHIBIT No. 15.

In the Superior Court, City and County of San Francisco, State of California.

JUNE 13TH, 1896.

Present: Hon. J. C. B. Hebbard, judge.

L. V. MERLE, Plaintiff,
vs.
BOARD OF SUPERVISORS OF SAN FRANCISCO ET AL., Defendants.
No. 54942.
Department 4.

The further hearing of this case was this day resumed, all parties represented by their respective counsel as heretofore; and
651 after argument of counsel for respective parties: It is ordered by the court that said cause be submitted to the court for consideration and decision and taken under advisement.

I hereby certify the foregoing to be a full, true and correct copy of an order made, and entered on the minutes of said superior court, in the above-entitled cause, on the 13th day of June, 1896, and now remaining of record in my office.

Attest my hand and the seal of said superior court, this 29th day of May, 1899.

[SEAL.]

WM. A. DEANE, Clerk,
By GEO. S. McCOMB,
Deputy Clerk.

(Endorsed:) U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Francisco, *et al.*, *vs.* The Cal. Reduction Co., *et al.*, No. 12,714. Respondents' Exhibit 15. E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

652 RESPONDENTS' EXHIBIT No. 16.

In the Superior Court, City and County of San Francisco, State of California.

JUNE 17TH, 1896.

Present: Hon. J. C. B. Hebbard, judge.

L. V. MERLE, Plaintiff,
vs.
BOARD OF SUPERVISORS OF SAN FRANCISCO *et al.*, Defendants.
No. 54942.
Department No. 4.

This cause having been heretofore submitted to the court for consideration and decision and taken under advisement, and now the

court having fully considered the same and being fully advised, it is ordered by the court that the application for a writ of mandate be and the same is hereby denied.

(Opinion filed.)

I hereby certify the foregoing to be a full, true and correct copy of an order made, and entered on the minutes of said superior court, in the above-entitled cause, on the 17th day of June, 1896, and now remaining of record in my office.

653 Attest my hand and the seal of said superior court, this 29th day of May, 1899.

[SEAL.] WM. A. DEANE, Clerk,
By GEO. S. McCOMB,
Deputy Clerk.

(Endorsed:) U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Francisco, *et al.*, *vs.* The Cal. Reduction Co., *et al.* No. 12,714. Respondents' Exhibit 16. E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman clerk. By W. B. Beaizley, deputy clerk.

RESPONDENTS' EXHIBIT No. 18.

L. V. MERLE
vs.
BOARD OF SUPERVISORS OF SAN FRANCISCO *et al.* } No. 54942. Dept. 4.

C. L. Tilden.

1896.

April 23. Affidavit and petition for writ of mandate filed.
24. Writ issued.
May 15. Answer filed.
June 11. Ord. trial cont'd until June 13.
12. Alternative writ of mandate filed.
13. Ord. trial resumed. Arg. and sub.
17. Ord. application of writ of mandate denied.
" Opinion filed.
23. Findings filed.
23. Decree filed.
24. Notice of decision etc. filed.
25. Decree denying writ of mandate recorded Book 32 page 153.
25. Roll filed. Decree docketed.

654

July 3. Notice of intention to move for a new trial filed.
Aug. 31. Ord. mo. for new trial granted.

Sept. 3. Complaint in intervention of F. E. Sharon and order permitting filing same filed.
5. Petitioner's answer to compl't in intervention filed.
7. Answer of Board of Supervisors to compl't in intervention of F. E. Sharon filed.
8. Ord. trial.
8. Ord. decree in favor of intervener as prayed for.
11. Findings filed.
11. Judgment and decree filed.
14. Notice of decision filed.
28. Judgment and decree recorded Book 31, page 471.
28. Roll filed. Judgment and decree docketed.

(Endorsed:) "Register of Actions 55."

I, Wm. A. Deane, county clerk of the city and county of San Francisco, State of California, and *ex-officio* clerk of the superior court, in and for said city and county, hereby certify the foregoing to be a full, true and correct copy of the original register entries in the above-entitled cause, contained in Register of Actions No. 55 on page 471, which said Register of Actions is in my custody in my office.

655 Attest my hand and seal of said court, this 29th day of May, A. D. 1899.

[SEAL.]

WM. A. DEANE, Clerk,
By JOS. GODDARD,
Deputy Clerk.

(Endorsed:) No. 54,942. Superior court, city and county of San Francisco, State of California. L. V. Merle *vs.* Board of Supervisors of San Francisco *et al.* Certified copy of register entries. U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Francisco, *et al. vs.* The Cal. Reduction Co. *et al.* No. 12,714. Respondents' Exhibit 18. E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. H. Beaizley, deputy clerk.

656 RESPONDENTS' EXHIBIT No. 19.

In the Superior Court, City and County of San Francisco, State of California.

SEPTEMBER 8, 1896.

Present: Hon. J. C. B. Hebbard, judge.

L. V. MERLE, Plaintiff,
vs.
BOARD OF SUPERVISORS OF SAN FRANCISCO, Defendants, and F. E. Sharon, Intervener.
No. 54,942.
Department 4.

This cause came on regularly this day to be heard, Messrs. Tilden & Tilden appearing as counsel for plaintiff and H. Cresswell, Esq., appearing as counsel for defendant, and Messrs. Mitchell and Pearson appearing as counsel for intervener, thereupon certain documentary evidence was introduced on behalf of plaintiff, de-
657 fendant and intervener thereupon the cause was submitted to the court for consideration and decision thereupon, it is ordered by the court that a decree be entered herein in favor of intervener as prayed for.

I hereby certify the foregoing to be a full, true and correct copy of an order made, and entered on the minutes of said superior court, in the above-entitled cause, on the 8th day of September, 1896, and now remaining of record in my office.

Attest, my hand and the seal of said superior court, this 29th day of May, 1899.

[SEAL.]

WM. A. DEANE, Clerk,
By GEO. S. McCOMB,
Deputy Clerk.

(Endorsed:) U. S. circuit court, N. dist. of Cal. The Sanitary Reduction Works of San Francisco, *vs.* The Cal. Reduction Co. *et al.* No. 12,714. Respondents' Exhibit 19. E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

658 RESPONDENTS' EXHIBIT- NOS. 23, 24, AND 33.

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } ss:

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify that I am now, and have been for more than ten years last past, the duly elected, qualified and acting clerk of the board of supervisors of the city and county of San Francisco, State of California.

I further certify that the following are true copies of certain papers on file in the office of the clerk of the said board, the same being the documents introduced in evidenced on behalf of respondents in the above-entitled action and marked respectively Respondents' Exhibit 23, Respondents' Exhibit 24 and Respondents' Exhibit 33.

659 1.

To the hon. the board of supervisors of the city and county of San Francisco, State of California:

I, the undersigned, a resident of the city and county of San Francisco, State of California, do hereby apply to your honorable board for a franchise for the term of fifty years for the sole right and privilege to cremate garbage, house refuse, dead animal and putrid vegetable matter and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same or a portion thereof into fertilizing matter or other substances, and for that purpose to erect reduction works in the city and county of San Francisco aforesaid, all of which is to be free of all cost or charge to said city and county, and I respectfully request that this application be favorably entertained by your honorable board, and that in the event your board decides to grant said franchise, that said franchise be awarded to the highest bidder after the fact that this application has been made and that your honorable board intends to grant the same has been advertised as required by the provisions of an act entitled "An act providing for the sale of railroad and other franchises in munici-

palities and relative to granting of franchises." (Approved March 23, 1893.)

And your petitioner will ever pray, etc.

(Signed) A. M. SKELLY, Petitioner.

660 (Endorsed:) Petition of A. M. Skelly for a franchise for a period of fifty years to cremate garbage, house refuse. H. & P. Nov. 15, 1895. Place on file. The committee having prepared a form of order for a franchise which is submitted for the inspection of the members, prior to the clerk being directed by your com. under instructions from your board, to advertise for bids. Clerk's office. Filed Nov. 8, 1895. San Francisco, Cal. board of supervisors. Resp'd'ts' Ex. 23, E. H. H.

2.

SAN FRANCISCO, Feb. 1st, 1896.

To the honorable board of supervisors of the city and county of San Francisco.

GENTLEMEN: The undersigned begs respectfully to call your attention to a bid made by him for the franchise to cremate garbage, which was duly advertised for, as required by law.

In the daily press it appears that the committee of your honorable board intend to recommend an award of the franchise to a bidder therefor by the name of L. B. Merle, who bid the sum of $5,500 for said franchise. If this be so, I desire to inform your honorable board that I am a higher bidder than the said Merle and if there is any discretion in your honorable board I am entitled to receive said franchise, being higher bidder in this: The percentage contained in my bid will realize to the city and county on the gross receipts a sum exceeding $100,000 during the continuance of said franchise.

As it is, I am content to abide by your decision if you can 661 exercise discretion, but if not, I claim to be a higher bidder than Merle and entitled to the franchise if the other percentage bid is informal and not in conformity with the notice inviting proposals.

Respectfully submitted,

(Signed) A. M. SKELLY.

(Endorsed:) Petition of A. M. Skelly calling attention to a bid made by him for a franchise to cremate garbage which he claims to be higher than that made by L. B. Merle, and that he is entitled to the franchise. H. & P. Feb. 7, 1896. Place on file. Resp'd'ts' Ex. 24. E. H. H. Clerk's office. Filed Feb. 1, 1896. San Francisco, Cal. board of supervisors.

3.

SAN FRANCISCO, CAL., Feb'y 1st, 1896.

To the honorable the board of supervisors of the city and county of San Francisco.

GENTLEMEN: I learn from the morning papers, that the committee on health and police, has recommended to your honorable board that the franchise to cremate garbage be awarded to one Merle, who is the lowest bidder for the same.

If this statement in the morning papers is correct, either your committee has been misinformed as to the facts, or, if informed as to the facts, are violating the express provisions of the statute of 1893, which makes it mandatory upon your honorable board to award the franchise to the highest bidder.

662 At the meeting of the health and police committee yesterday, the 31st ult., my attorney, Mr. R. B. Mitchell, of Pierson & Mitchell, appeared and called the attention of the committee to the fact that my bid was the highest and best bid, and thereupon offered, if there were any doubt in the minds of any of the members of the committee, to demonstrate that it was the highest and best bid, by analyzing the bid itself. He also stated that he would answer any questions which any member of the committee might desire to address to him touching the bid or franchise, and any information they required would be cheerfully given. No information was required and no questions asked.

In order that all the members of your honorable board may be advised, I hereby notify you that I am the highest bidder for the franchise; that the fact that I am the highest bidder appears upon the face of the bid; that I protest against the award of the franchise to any other than myself, and that, if this honorable board attempts to award the franchise to anyone other than myself, I shall rely upon my legal rights and take such action in the matter against the members of this honorable board, individually and collectively, as I am advised.

Very respectfully submitted,
(Signed) F. E. SHARON.

(Endorsed:) Protest of F. E. Sharon against the award of the franchise to cremate garbage to anyone other than himself as he claims to be the highest bidder for the same, which fact ap-
663 pears upon the face of the bid. H. & P. Feb. 7, 1896. Place on file. Respdt. Exh. 33. E. H. H. Clerk's office. Filed Feb. 1, 1896. San Francisco, Cal. board of supervisors.

In witness whereof, I have hereto signed my name as clerk of said board of supervisors (having no seal of office) this 20th day of December, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California,
By F. A. ELLIOTT,
Deputy Clerk.

(Endorsed:) Respondents' Exhibits 23, 24 and 33. Certified copies. E. H. H., examiner. Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beairley, deputy clerk.

RESPONDENTS' EXHIBIT No. 31.

MERCHANTS' ASSOCIATION,
MILLS BUILDING, 7TH FLOOR, ROOMS 7, 8 AND 9,
SAN FRANCISCO, Jan. 24, 1896.

To the honorable board of supervisors of the city and county of San Francisco.

GENTLEMEN: The attention of the board of directors of this association has been called to a resolution of your board to accept bids upon a garbage crematory for the city and county of San Francisco under certain conditions for a period of fifty years.

664 The proper disposal of garbage is of great importance to and will affect the interests of every householder, business firm and taxpayer of this city. It may appear, that it would be be better for the city to own a plant for this purpose, and before steps are taken which will bind this city for a large number of years, all possible information upon this subject should be obtained and fully considered.

This association has already and is now obtaining more such information, and will soon be prepared to submit a full report upon this subject to your consideration. Therefore, we respectfully petition your honorable board to take no action in this matter until this report is before you, which will be the case within not more than sixty days from present date.

Respectfully yours,
MERCHANTS' ASSOCIATION.
F. W. DOHRMAN, President.
J. RICH'D FREUD, Secretary.

(Endorsed:) Petition of the Merchants' Association requesting the board to take no action in the matter of the acceptance of bids upon a garbage crematory until the association shall have submitted a full report upon the subject for the consideration of the board, which will be within not more than sixty days from this date.

H. & P. Jan. 31, 1896. Place on file in this matter, bids have been called for and the board have no discretion except to award to the highest bidder. Resp'd'ts Exh. 31. E. H. H. Clerk's office. Filed Jan. 25, 1896. W. T. P. San Francisco, Cal. Board of supervisors. No. 37.

665 Office of the Clerk of the Board of Supervisors of the City and County of San Francisco.

I, John A. Russell, clerk of the board of supervisors, of the city and county of San Francisco, do hereby certify that the foregoing is a true and correct copy of petition of the Merchants' Association as appears of record in this office.

In witness whereof, I have hereunto set my hand, having no seal of office, this 6 day of July, 1900.

JNO. A. RUSSELL, Clerk.
P. H. McKENNA,
Assistant Clerk.

Respondents' Exhibit No. 31. E. H. H., examiner. Published by order of court and filed Jan. 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

RESPONDENTS' EXHIBIT No. 32.

To the honorable the board of supervisors of the city and county of San Francisco.

GENTLEMEN: Your committee on health and police to whom various matters were referred beg leave respectfully to report as follows:

In favor of the communication from the chief of police with requisition for an extra saddle, bridle and halter for the mounted police patrol department—the chairman of your committee has been authorized to give an order for the same at a cost not to exceed $46.00.

666 Respecting a communication from the chief of police preferring charges against P. Stevens, driver of a patrol wagon, of being intoxicated while on duty (filed February 7, 1896) your committee report,

That in view of the commendatory statements in reference to the conduct of said Stevens, by the police officers who testified to his being intoxicated on one occasion, he was reprimanded and reinstated with a warning not to repeat the offense on pain of dismissal.

Further report,

In favor of the final passage of order No. 2952 relating to the location of police stations (vetoed by his honor the mayor) notwithstanding the objections of the mayor.

Respecting a petition from the National Club of Physical Culture for permission to give three athletic exhibitions and promising if said permission is granted to donate $1,000 out of the proceeds of said exhibitions after they have been given, to the Children's hospital. Your committee report that a permit has been granted on the stipulation made.

The following are recommended to be placed on file.

Communication from the Odorless Cremation Company of Oakland inviting the board to be present at an exhibition of their apparatus on February 8, 1896.

Petitions of A. M. Skelly and of the Merchants' Association with regard to the granting of the franchise for the cremation of garbage.

Also

667 Protest of F. E. Sharon against the award of the franchise referred to claiming that he was the highest bidder therefor.

C. E. BENJAMIN.
JOS. KING.
CHRIS. DUNKER.
ALFRED W. MORGENSTERN.

Office of the Clerk of the Board of Supervisors of the City and County of San Francisco.

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, do hereby certify that the foregoing is a true and correct copy of report of committee on health and police as appears of record in this office.

In witness whereof, I have hereunto set my hand, having no seal of office, this 6 day of July, 1900.

JNO. A. RUSSELL, Clerk,
By P. H. McKENNA,
Assistant Clerk.

(Endorsed:) Respondents' Exhibit No. 32. E. H. Heacock, examiner. Published by order of court and filed Jan. 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

668 RESPONDENTS' EXHIBIT No. 34 AND RESPONDENTS' EXHIBIT No. 37.

In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents.

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } ss:

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify that I am now, and have been for more than ten years last past, the duly elected, qualified and acting clerk of the board of supervisors of the city and county of San Francisco, State of California.

I further certify that the following is a true copy of a certain document appearing on file in the office of the said clerk, and being the document offered and introduced in evidence in the above entitled action on behalf of respondents and marked Respondents' Exhibit 34.

669 I further certify that the same is a true copy of the order introduced before said board of supervisors by Supervisor Benjamin on the 3d day of February, 1896, but never passed by said board of supervisors:

Order No. Three.

Granting to L. V. Merle, his associates and assigns, the sole right and privilege to cremate garbage, house refuse, dead animal and putrid vegetable matter and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same, or a portion thereof, into fertilizing matter and other substances, free of all cost or charge to said city and county, and making certain violations of this order misdemeanors.

Whereas, the disposal of house refuse, butchers' offal, garbage, putrid or stinking animal or vegetable matter, refuse, ashes or other like matter, by cremation, or by some process of chemical reduction, is the only effective means to dispose of the same to prevent the said matter and material from being deposited in or upon lots, lands and public streets situate in the city and county or in the waters of the bay, as heretofore, to the prejudice of the public health; and

Whereas, under the provisions of an act of the legislature entitled "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises" (approved March 23, 1893), bids for a franchise were duly called for; and

Whereas, L. V. Merle was the highest and best bidder for
670 the said franchise, as hereinafter recited, and all the forms and requirements of law necessary thereto being complied with; now, therefore,

The people of the city and county of San Francisco do ordain as follows:

In consideration of the sum of fifty-five hundred ($5,500) dollars the franchise hereinafter recited is hereby granted to L. V. Merle, his associates and assigns.

SECTION 1. The sole and exclusive right and privilege is hereby conferred upon and granted to L. V. Merle, his associates and assigns, for a term of fifty years from and after the approval of this order, to cremate and destroy within the city and county aforesaid, by crematories or by a process of reduction, house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted), and putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and the said grantees, their associates and assigns, shall have the right and privilege to charge and collect therefor not exceeding the sum of twenty cents per load, such load not to exceed a cubic yard, on the delivery of the above material or substances at the plant or works where the crematory or reduction plant is established.

SECTION 2. The grantees, their associates and assigns, shall
671 within a period of twenty-four (24) months after the granting of this franchise, unless the time is extended therefore by this board, have fully erected and constructed and in operation a suitable building or buildings, and equip, fit up and install the same with the necessary crematories, machinery, tools and appliances required to cremate and destroy by cremation, or by process of reduction, all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, and any dead animal and putrid vegetable matter, and fish, flesh and food condemned by the board of health as unfit for human food.

The work when first constructed to have a capacity to cremate at least three hundred tons per day of the said material specified in this section, and to cost in the neighborhood of one hundred thousand ($100,000) dollars.

"SECTION 3. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to remove through the public streets from any houses, hotels, markets, hospitals, factories, restaurants, stores or any other like building or place in this city and county

any refuse, butchers' offal, garbage, dirt, ashes, cinders, sludge, crockery, tins, bones or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food condemned by the board of health as unfit for human food, or dead animals whose re-
672 moval is not otherwise provided for by contract or franchise heretofore granted, unless the same shall be removed through said public streets in closed vehicles and wagons constructed so as to conceal the contents from public view, and to effectually prevent any smell escaping therefrom, as well as to prevent the dropping of any portion of such material or substances on or upon the public streets, and which said vehicles and wagons shall be constructed in accordance with specifications approved by the board of health of said city and county.

SECTION 4. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to dump or place upon any land within said city and county, or in any water or waterways within said city and county, any refuse, butchers' offal, garbage or other material mentioned in section 3 of this order, but such refuse, butchers' offal, garbage and other material shall be forthwith delivered to the crematory herein provided for, and there, at the expense of the person or corporation so conveying the same, be cremated or destroyed, or subjected to such disposition and treatment as will at once secure and effect a complete combustion of all gases and odors arising therefrom.

SECTION 5. The said grantees, their associates and assigns, on receipt of any of the material or substances specified in this order, shall within twenty-four (24) hours thereafter cremate or reduce the same, or shall subject the same to such process as will secure the complete combustion of all gases or odors arising therefrom.
673 The said grantees, their associates and assigns, shall maintain and operate their plant and crematory or crematories, or other apparatus, and the matter and substances received, so as to prevent any obnoxious smells or gases being emitted either from the deposits of such matter or substances on their premises or from the process of cremation or other treatment thereof, or from the residuum remaining after cremation or treatment as aforesaid; also, that in the operation of said works no smoke or soot shall be emitted so as to constitute a nuisance.

SECTION 6. The said grantees, their associates and assigns, shall from and after the first day of December 1902, have the sole and exclusive right and privilege during the continuance of the remainder of the term of this franchise to remove and dispose of the carcasses of all dogs killed at the public pound, and all animals impounded and not redeemed by the owners thereof, and which are valueless and cannot be sold; also, to remove and dispose of the carcasses of all dead animals found upon the public streets, and the carcasses of all dead animals in said city and county not slain for human food, which shall not be removed and disposed of by the

owners thereof so as not to become a nuisance within six hours after the death of the same; provided that in the event the parties now holding and exercising this privilege or removing the dead animals not slain for human food should hereafter fail or refuse to remove the dead animals and should forfeit their contract with said city and county, then immediately upon such forfeiture the right to remove said dead animals shall vest in the grantees herein,
674 their associates and assigns, under this order.

SECTION 7. This board will pass such orders as may be required from time to time to enable the said grantees, their associates and assigns, to enjoy and have the benefit of all the rights and privileges herein granted, and on the completion of the works will pass such other and additional orders as will enable the said grantees, their associates and assigns, to carry out the contemplated destruction of garbage, offal, house refuse and material mentioned in this order, and the conversion of the substances herein named for fertilizing and other purposes, and for the segregation prior to delivery of garbage and offal from ashes and other refuse.

SECTION 8. The said grantees, their associates and assigns, shall at all times be subject to and conform to all health and sanitary regulations and requirements enacted and in force during the existence of this franchise. The said grantees, their associates and assigns, shall receive no compensation whatever from the city and county for any service performed under the conditions of this order in disposing of the material and substances specified in this order.

SECTION 9. This franchise shall cease and determine upon the failure of the grantees, their associates and assigns, to fully carry out and faithfully perform the obligations herein imposed, unless from unavoidable cause beyond the control or power of the grantees, their associates and assigns, by reason of any fire or other casualty, the operations and works shall be destroyed or temporarily
675 suspended in their operation. The said grantees, their associates and assigns, in the event of an accident to or destruction of their works, shall during the time such works cannot be operated, and until said works are repaired or reconstructed, and within such reasonable time as may be allowed and approved by this board, shall deodorize the material and substances specified in this order and dispose of the same as directed by this board, so as to prevent all noxious gases or odors escaping therefrom, until the said material or substances are cremated or utilized as provided by this order.

SECTION 10. All of the machinery and appliances used shall be of California manufacture, except such as are manufactured exclusively or patented in the Eastern States or abroad.

SECTION 11. The said grantees, their associates and assigns, shall within a period of ten days from the date of the approval of this order, file with the clerk of this board their acceptance of its provisions and of this franchise.

SECTION 12. Any violation of the provisions of sections 3 and 4 of

this order shall be and are hereby declared to be a misdemeanor, and punishable as such.

SECTION 13. This order shall take effect and be in force on and from its passage.

All orders or parts of orders in conflict with the provisions of this order are hereby repealed and made null and void.

C. E. Benjamin. Feb. 3, 1896.
Over 1 week to Feb. 10, 1896.
676 Feb. 10, 1896.—Over 1 week to Feb. 17, 1896.
Feb. 17, 1896.—Lost.

And the clerk is hereby directed to advertise this order as required by law; in board of supervisors, San Francisco, ——, 189-, adopted by the following vote:

Ayes—Supervisors King, Scully, Benjamin, Hirsch, Dimond, Hughes, Dunker, Taylor, Morgenstern, Spreckels, Hobbs, Wagner.

Noes—Supervisors —— ——.

Excused from voting—Supervisors —— ——.

Absent—Supervisors —— ——.

(5 times.)

JNO. A. RUSSELL, Clerk.

Resp'd'ts Ex. 34. E. H. H.

(Endorsed:) Feb. 10, 1896. Garbage franchise, over 1 week. Feb. 17, 1896. Lost.

I further certify that the following is a true copy of a certain document filed in the office of the said clerk on the 27th day of March, 1896, and introduced in evidence in the above-entitled action on behalf of respondents and marked Respondents' Exhibit 37:

To the honorable board of supervisors of the city and county of San Francisco:

The undersigned, L. V. Merle, hereby demands that his bid for the franchise for the sole right and privilege to cremate garbage, house refuse, dead animals, and putrid vegetable matter and material of like character, made by him under and in accordance with the terms of resolution No. 13,231 (third series) of the board
677 of supervisors of the city and county of San Francisco, be accepted, and he demands that said franchise be awarded and granted to him for the term of fifty years as provided for in said resolution, and he hereby notifies you that he is the highest and best bidder therefor and is entitled to and claims said franchise and is willing to and does hereby agree to accept said franchise, subject to all the terms and conditions of said resolution and the law in relation to the granting of such franchises, and agrees to comply with and perform all the terms and conditions on his part to be performed in connection with the granting of said franchise and the

San Francisco

Bank	Maker	Amt.	Name of D Names of
Wells Fargo & Co.		2,500⁰⁰	F. E. SH
Wells Fargo & Co.		1,105⁰⁰	A.M. SK
Anglo Cal.		5,500	L. V. ME

Respondents Exh. No. 36

No. 755.
Cal. Reduction Co.
vs
Sentinel Reduction Works.
} p. 1079.

OF SUPERVISORS.

Franciseo- January 26- 1900.

Name of Depositor Names of Bidders.	Franchise For the cremation of garbage for sale 1st. Character and Capacity of Works and Probable Cost.	2nd. Amount offered for Franchise	Additional compensation Per Centage on Gross Annual Receipts	
F. E. SHARON	$100,000 Cost. Capacity 250 tons daily	$2510.	For the 1st 15 years 2% each year. On each succeeding year 5%	To H. & P COMMIT
A.M. SKELLY		1105	For 1st 15 years 1% For 2nd 15 years 2% For each Year thereafter 3%	
L. V. MERLE	$100,000 Capacity 300 Tons Daily	5500		
				Check left by L. V. Merle pending Returned

Office of the Clerk of the Board of Supervisors o
San Francisco.

I, JOHN A. RUSSELL, Clerk of the Board of Super
County of San Francisco, do hereby certify the
rect copy of Page 70 of Certified Check Book
this office.

In Witness Whereof, I have hereunto set my
office, this 6th day of July 1900.

Jno A
By P.H. McKenn

Disposition of Checks.

ensa- e on Receipts ears On each r 5%		By Whom Received Date	No.	
	To H. & P COMMITTEE	Feb 17 - 1896	2965	Feb. 18, 1896 - Paid $2510. into Treasury
1% s 2% 3%		Feb. 20 - 1896		Geo. D. Squires, Atty.
		Feb. 25 - 1896		L. V. Merle.
	Check left by L. V. Merle pending Litigation. Returned	Mch 27 - 1896 Sept 30 - 1896		L. V. Merle.

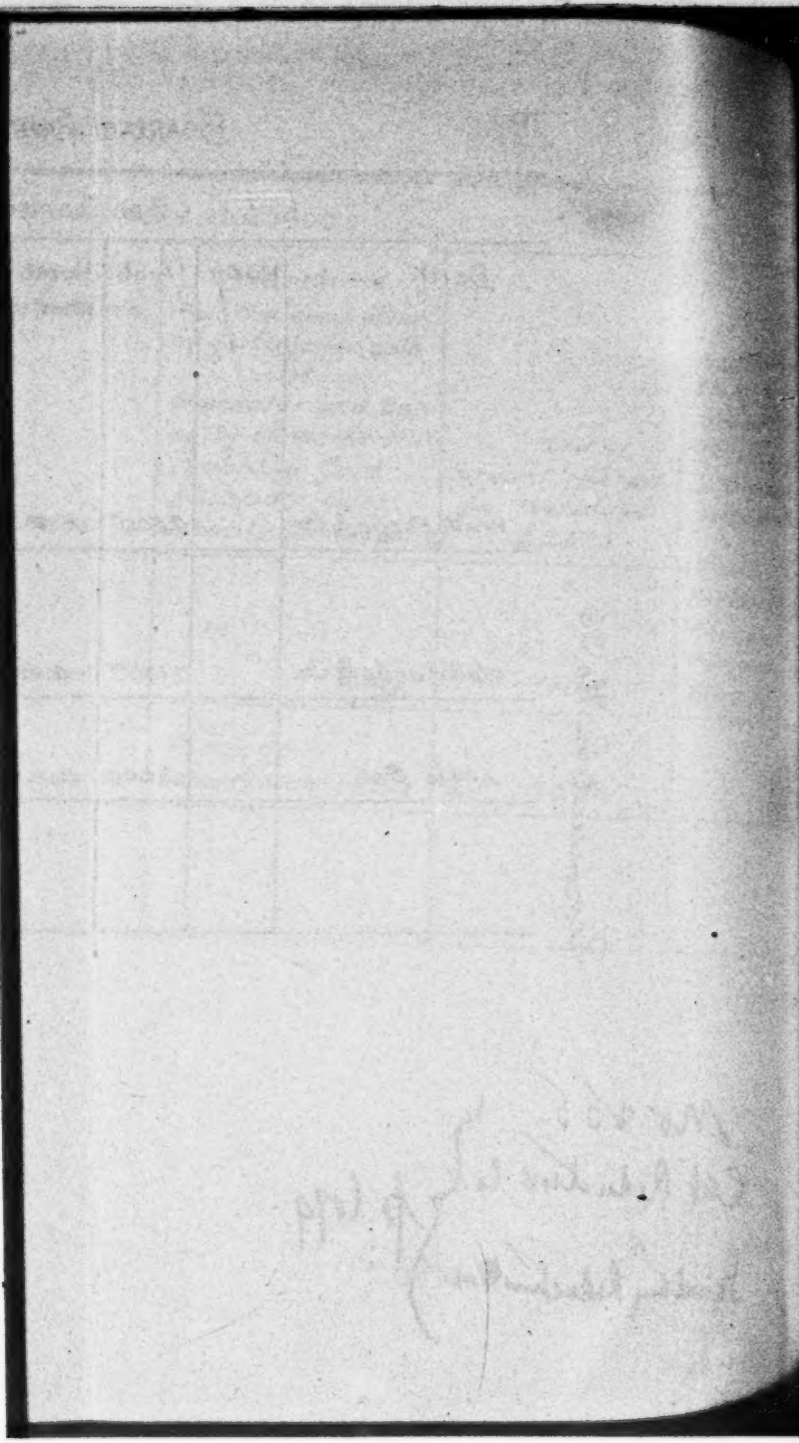
Clerk of the Board of Supervisors of the City and County of San Francisco.

A. RUSSELL, Clerk of the Board of Supervisors, of the City and San Francisco, do hereby certify the Foregoing is a true and cor- of Page 70 of Certified Check Book No. 29 as appears of record in

ss Whereof, I have hereunto set my hand having no Seal of 6th day of July 1900.

Jno A. Russell, Clerk.
By P. H. McKenna, Assistant Clerk

Endorsed Published by order of Court and filed January 3. 1901. Southard Hoffman, Clerk By W. B. Beazley, Deputy Clerk.



erection, construction and operation of the works, as provided in said resolution.

(Signed) L. V. MERLE.

(Endorsed:) Petition of L. V. Merle demanding that his bid for the franchise for the sole right and privilege to cremate garbage, etc., be accepted, and that the franchise be awarded to him for the term of 50 years. Also agreeing to accept said franchise subject to all the terms and conditions of resolution No. 13,231. (Third series.) H. & P. (Morgenstern) Apr. 3, 1896. Over 1 week. Apr. 10, 1896. Against, the board having awarded a Apr. 10, 1896, franchise by order No. 2965, the board has no power in the premises. Clerk's office. Filed Mar. 27, 1896. San Francisco, Cal., board of supervisors. Demand — L. V. Merle to board of supervisors of San Francisco for franchise to cremate garbage, etc. Respts.' Exh. 37. E. H. H.

678 In witness whereof, I have hereunto signed my name as clerk of said board of supervisors (having no seal of office) this 20th day of December, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California,
By F. A. ELLIOTT,
Deputy Clerk.

(Endorsed:) Published by order of court and filed January 3, 1901. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

(Here follows diagram marked page 679.)

680 & 681 In the United States — Court, Ninth Judicial Circuit, Northern District of California.

No. 12,714.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,

vs.

THE CALIFORNIA REDUCTION COMPANY (a Corporation), S. Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcona, D. Semsangla, G. Cereghino, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Cosstanta, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo, A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frienze, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, G. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Motini, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J.
682 Muzio, M. Nava, John Mooe, J. Paganini, C. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, Guiseppa Arata, Sued Herein as First Italian; Luigi Brasetto, Sued Herein as Second Italian; Giovanni Canecia, Sued Herein as Third Italian; Guiseppe Censigliére, Sued Herein as Fourth Italian; Antonio Campi, Sued Herein as Fifth Italian; Antonio Cuneo, Sued Herein as Sixth Italian; Giovanni Cagezzio, Sued Herein as Seventh Italian; Luigi Cararo, Sued Herein as Eighth Italian; Luigi Cereghino, Sued Herein as Ninth Italian; Vincinzo Chiosso, Sued Herein as Tenth Italian; Antonio Camicia, Sued Herein as Eleventh Italian; Giovanni Cesta, Sued Herein as Twelfth Italian; Ginglio Demartini, Sued Herein as Thirteenth Italian; Paolo Demartini, Sued Herein as Fourteenth Italian; Angelo De Vincenzi, Sued Herein as Fifteenth Italian; Antonio Delucchi, Sued Herein as Sixteenth Italian; Bartolomeo Devincenzi, Sued Herein as Seventeenth Italian; Antonio Dendero, Sued Herein as Eighteenth Italian; Emiglio Devincenzi,
683 Sued Herein as Nineteenth Italian; Domenico Delucchi, Sued Herein as Twentieth Italian; G. B. Esspesto, Sued Herein as Twenty-first Italian; Luigi Figeni, Sued Herein as Twenty-second Italian; Abramo Feretti, Sued Herein — Twenty-third Italian; G. B. Feppiano, Sued Herein as Twenty-fourth Italian, Angelo Ferrari, Sued Herein as Twenty-fifth Italian; Giovanni Figeni, Sued Herein as Twenty-sixth Italian; Luigi Figeni, Sued Herein as Twenty-seventh Italian; Francesco Fraviga, Sued

Herein as Twenty-eighth Italian; Giovanni Firenze, Sued Herein as Twenty-ninth Italian; Antonio Lucchitti, Sued Herein as Thirtieth Italian; Pietro Leonardino, Sued Herein as Thirty-first Italian; Giovanni Melinari, Sued Herein as Thirty-second Italian; Eluro Marini, Sued Herein as Thirty-third Italian; Firpe Michele, Sued Herein as Thirty-fourth Italian; Vitterio Muzio, Sued Herein as Thirty-fifth Italian; Giacome Muzio, Sued Herein as Thirty-sixth Italian; G. B. Medani, Sued Herein as Thirty-seventh Italian; Luigi Muzio, Sued Herein as Thirty-eighth Italian; Agostine Muzio, Sued Herein as Thirty-ninth Italian; Pietro Mesante, Sued Herein as Fortieth Italian; Michele Nave, Sued Herein as Forty-first Italian; Domenico Picitti, Sued Herein as Forty-second Italian; Domenico Paganini, Sued Herein as
684 Forty-third Italian; Luigi Peggi, Sued Herein as Forty-fourth Italian; Andrea Pedesta, Sued Herein as Forty-fifth Italian; Giovanni Pisigeni, Sued Herein as Forty-sixth Italian; Giuseppe Quieretto, Sued Herein as Forty-seventh Italian; Luigi Rappo, Sued Herein as Forty-eighth Italian; Francesco Ratto, Sued Herein as Forty-ninth Italian; Antonio Tescioma, Sued Herein as Fiftieth Italian, Respondents.

In Equity. Appeal.

Petition for Appeal.

All of the respondents in the above-entitled action, conceiving themselves aggrieved by the final decree entered January 7th, 1902, in said action, do hereby appeal from said final decree to the United States circuit court of appeals for the ninth circuit, for the reasons specified in the assignment of errors filed herewith; and pray that this, their appeal, may be allowed; and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said court of appeals.

BLACK & LEAMING,
Attorneys of Respondent and Appellant, The California Reduction Company.
PAGE, McCUTCHEN & EELLS,
GARRET W. McENERNEY,
Attorneys of Respondents and Appellants Other Than The California Reduction Company, a Corporation.

685 (Endorsed:) Filed June 30, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

In the United States — Court, Ninth Judicial Circuit, Northern District of California.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Respondents.
No. 12714.

Assignment of Errors.

Now come the appellants herein, by their attorneys, and assign the following as the errors upon which they rely and which they will urge upon their appeal in the above-entitled action.

In the records and proceedings in the said action and in the making of the final decree therein there is manifest error in this, to wit:

1. That by the said records and proceedings and decree it appears that such proceedings were had and taken and decree made and rendered against appellants, and each of them, as is an unlawful and unconstitutional invasion of their rights of personal liberty, and as is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and
686 section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said proceedings and decree appellants are wrongfully denied the privilege of exercising and pursuing in a lawful and harmless manner lawful and *and* ordinary businesses and avocations of life which are of common and fundamental right to all people; and without any justifying necessity or public need or lawful authority or right of such denial. And in this, to wit:

2. That by the said records and proceedings and decree it appears that such proceedings were had and taken and decree made and rendered against appellants, and each of them, as is an unlawful and unconstitutional invasion of their rights of personal liberty, and as is repugnant to and in conflict with the provisions of the 5th amendment to the Constitution of the United States and section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said proceedings and decree appellants are wrongfully denied the privilege of exercising and pursuing in a lawful and harmless manner lawful businesses and ordinary avocations of life which are of common and fundamental right to all people, to wit: the businesses of burning house refuse or other refuse or ashes, or garbage or dirt or cinders, or sludge, or crockery, or tins or bones or other like matter, or dead animals, or putrid vegetable matter, or such fish, flesh or food as may be con-

demned by the board of health of the city and county of San Francisco, and also the businesses of transporting all or any
687 of said articles through, in or from and out of the said city and county of San Francisco, and also the businesses of selling or using or dealing in all or any of said articles; and that without any justifying necessity or public need or lawful authority or right of such denial. And in this to wit:

3. That by said records and proceedings and decree it appears that such proceedings were had and taken and decree made and rendered against appellants, and each of them, as is an unlawful and unconstitutional invasion of their rights to and in private property, and as is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said proceedings and decree appellants are deprived of property and property rights without due process of law. And in this, to wit:

4. That by said records and proceedings and decree it appears that such proceedings were had and taken and decree made and rendered against appellants, and each of them, as is an unlawful and unconstitutional invasion of their rights to and in private property and as is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said proceedings and decree appellants are deprived of property and property rights
688 without due process of law, to wit, appellants and each of them are deprived of their house refuse and other refuse and ashes and garbage and dirt and cinders and sludge and crockery and tins and bones and other like matter, and dead animals and putrid vegetable matter, and such fish, flesh or food as may be condemned by the board of health of the city and county of San Francisco. And in this, to wit:

5. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right of personal liberty, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and

13 and 14 of article I of the constitution of the State of California, in that by said order, as the same was in and by said proceedings and decree construed and enforced against appellants, appellants are wrongfully denied the privilege of exercising and pursuing in a lawful and harmless manner lawful businesses and ordi-
689 nary avocations of life which are of common and fundamental right to all people; and that without any justifying necessity or public need or lawful authority or right of such denial. And in this, to wit:

6. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is an unreasonable and unlawful and unconstitutional invasion of appellants' right of personal liberty, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said order, as the same was in and by said proceedings and decree construed and enforced against appellants, appellants are wrongfully denied the privilege of exercising and pursuing in a lawful and harmless manner lawful businesses and ordinary avocations of life which are of common and fundamental right to all people, to wit, the businesses of burning house refuse or other refuse or ashes, or garbage or dirt or cinders, or sludge, or crockery
690 or tins or bones or other like matter, or dead animals, or putrid vegetable matter, or such fish, flesh or food as may be condemned by the board of health of the city and county of San Francisco, and also the businesses of transporting all or any of said articles through, in or from and out of the said city and county of San Francisco, and also the businesses of selling or using or dealing in all or any of said articles; and that without any justifying necessity or public need or lawful authority or right of such denial. And in this, to-wit:

7. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings and decree construed and en-

forced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right of personal liberty and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States, and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said order, as the same was in and by said proceedings and decree construed and enforced against ap-
691 pellants, appellants are wrongfully denied the privilege of exercising and pursuing in a lawful and harmless manner lawful business and ordinary avocations of life which are of common and fundamental right to all people; and that without any justifying necessity or public need or lawful authority or right of such denial. And in this, to-wit:

8. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants, were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right of personal liberty, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said order, as the same was in and by said proceedings and decree construed and enforced against appellants, appellants are wrongfully denied the privilege of exercising and pursuing in a lawful and harmless manner lawful businesses and ordinary avocations of life which — of common and fundamen-
692 tal right to all people, to wit, the businesses of burning house refuse or other refuse or ashes, or garbage or dirt, or cinders, or sludge, or crockery, or tins or bones or other like matter or dead animals, or putrid vegetable matter, or such fish, flesh or food as may be condemned by the board of health of the city and county of San Francisco, and also the businesses of transporting all or any of said articles through, in or from and out of the said city and county of San Francisco, and also the businesses of selling or using or dealing in all or any of said articles; and that without any justifying necessity or public need or lawful authority or right of such denial. And in this, to wit:

9. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based

and founded upon the provisions of a certain resolution of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right of personal liberty, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Consti-
693 tution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said resolution, as the same was in and by said proceedings and decree construed and enforced against appellants, appellants are wrongfully denied the privilege of exercising and pursuing in a lawful and harmless manner lawful businesses and ordinary avocations of life which are of common and fundamental right to all people; and that without any justifying necessity or public need or lawful authority or right of such denial. And in this, to wit:

10. That by said records and proceeding- and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain resolution of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right of personal liberty, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitu-
694 tion of the State of California, in that by said resolution, as the same was in and by said proceedings and decree construed and enforced against appellants, appellants are wrongfully denied the privileges of exercising and pursuing in a lawful and harmless manner lawful businesses and ordinary avocations of life which are of common and fundamental right to all people, to wit, the businesses of burning house refuse and other refuse or ashes, or garbage or dirt or cinders, or sludge, or crockery or tins or bones or other like matter, or dead animals, or putrid vegetable matter, or such fish, flesh or food as may be condemned by the board of health of the city and county of San Francisco, and also the businesses of transporting all or any of said articles through, in or from and out of the city and county of San Francisco, and also the businesses of selling or using or dealing in all or any of said articles,

and that without any justifying necessity or public need or lawful authority or right of such denial. And in this, to wit:

11. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right to and in private property, and
695 is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said order, as the same was in said proceedings and decree construed and enforced against appellants, appellants were wrongfully deprived of property and property rights without due process of law. And in this, to wit:

12. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right to and in private property, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said order, as the same was in said
696 proceedings and decree construed and enforced against appellants, appellants were wrongfully deprived of property and property rights without due process of law, to wit, appellants and each of them, are deprived of their house refuse and other refuse and ashes and garbage and dirt and cinders and sludge and crockery and tins and bones and other like matter, and dead animals and putrid vegetable matter, and such fish, flesh or food as may be condemned by the board of health of the city and county of San Francisco. And in this to wit:

13. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said pro-

ceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings, and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right to and in private property, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article 1 of the constitution of the State of California, in that by said order, as the
697 same was in said proceedings and decree construed and enforced against appellants, appellants were wrongfully deprived of property and property rights without due process of law. And in this, to wit:

14. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right to and in private property, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th Amendment of the Constitution of the United States and of section- 1 and 13 and 14 of article I of the constitution of the State of California, in that by said order, as the same was in said proceedings and decree construed and enforced against appellants, appellants were wrongfully deprived of property and property rights without due process of law, to wit, appellants and each of them, are deprived of their house refuse and other refuse and ashes and
698 garbage and dirt and cinders and sludge and crockery and tins and bones and other like matter, and dead animals and putrid vegetable matter, and such fish, flesh, or food as may be condemned by the board of health of the city and county of San Francisco. And in this, to-wit:

15. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree *awarded to complainant and the remedies in said proceedings and decree* enforced against appellants were wholly based and founded upon the provisions of a certain resolution of the board of supervisors of the city and county of San Francisco, a munici-

pality of the State of California, said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution, as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right to and in private property, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said resolution, as the same was in said proceedings and decree construed and enforced against appellants, appellants were wrongfully deprived of property and property rights without due process of law.

And in this, to wit:

699 16. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain resolution of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution, as the same was in said proceedings and decree construed and enforced against appellants, is an unreasonable and unlawful and unconstitutional invasion of appellants' right to and in private property, and is repugnant to and in conflict with the provisions of the 5th amendment of the Constitution of the United States and of section 1 of the 14th amendment of the Constitution of the United States, and of sections 1 and 13 and 14 of article I of the constitution of the State of California, in that by said resolution, as the same was in said proceedings and decree construed and enforced against appellants, appellants were wrongfully deprived of property and property rights without due process of law, to wit, appellants and each of them, are deprived of their house refuse and other refuse and ashes and garbage and dirt and cinders and sludge and crockery and tins and bones and other like matter, and dead animals and putrid vegetable matter, and such fish, flesh or food as may be condemned by the board of health of the city and county of San Francisco.

And in this, to wit:

700 17. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is repugnant to and in conflict with the

provisions of section 21 of article I of the constitution of the State of California, in that said order, as the same was in said proceedings and decree construed and enforced against appellants, grants special privileges or immunities, which may not be altered, revoked or repealed, and grants to a citizen or class of citizens, privileges or immunities which, upon the same terms was not and cannot be granted to all citizens, and grants and creates an exclusive privilege and an unlawful monopoly of a common right. And in this, to wit:

18. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is repugnant to and in conflict with the provisions of section 21 of article I of the constitution of the State of California, and in said order, as the same was in said proceedings and decree construed and enforced against appellants, grants special privileges or immunities, which may not be altered, revoked or repealed, and grants to a citizen, or class of citizens, privileges or immunities, which, upon the same terms was not and cannot be granted to all citizens. And in this, to wit:

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19. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is repugnant to and in conflict with the provisions of section 21 of article I of the constitution of the State of California, in that said order, as the same was in said proceedings and decree construed and enforced against appellants, grants special privileges or immunities, which may not be altered, revoked or repealed, and grants to a citizen or class of citizens, privileges or immunities which, upon the same terms was not and cannot be granted to all citizens, in that the same grants to complainant for a period of fifty years the exclusive right to cremate and destroy, within the city and county of San Francisco, by crematories or by process of reduction all house refuse, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted by said city and county) and all putrid vegetable matter, and fish, flesh and food condemned by the board of health

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of said city and county as unfit for human food, and grants to complainant the exclusive right and privilege during said period to charge and collect therefor. And in this, to wit:

20. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is repugnant to and in conflict with
703 the provision of section 21 of article I of the constitution of the State of California, in that said order, as the same was in said proceedings and decree construed and enforced against appellants, grants special privileges or immunities, which may not be altered, revoked or repealed, and grants to a citizen or class of citizens, privileges or immunities which, upon the same terms was not and cannot be granted to all citizens, in that the same grants to complainant for a period of fifty years the exclusive right to cremate and destroy, within the city and county of San Francisco, by crematories or by process of reduction all house refuse, dirt, ashes, cinders, sludge, crockery, tins, bones, and other like matter, and any dead animals (not otherwise provided for by contract or franchise theretofore granted by said city and county) and all putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and grants to complainant the exclusive right and privilege during said period to charge and collect therefor. And in this, to wit:

21. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain resolution of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution, as the same was in said proceedings and decree construed and enforced against appellants is repugnant to and in conflict with the provisions of section 21 of article I of the constitution of the State of California, in that said resolution, as the same was in said proceedings and decree construed and enforced against appellants, grants special privileges or immunities, which may not be altered, revoked or repealed, and grants to a citizen or class of citizens, privileges or immunities which, upon the same terms was not and cannot be granted to all citizens, in that the same grants to complainant for a period of fifty years the exclusive right to cremate and destroy, within the city
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and county of San Francisco, by crematories or by process of reduction all house refuse, dirt, ashes, cinders, sludge, crockery, tins, bones, and other like matter, and any dead animals (not otherwise provided for by contract or franchise theretofore granted by said city and county) and all putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and grants to complainant the exclusive right and privilege during said period to charge and collect therefor. And in this, to wit:

22. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965, of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is repugnant to and in conflict with the provisions of section 21 of article 1 of the constitution of the State of California, in that said order, as the same was in said proceedings and decree construed and enforced against appellants, grants and creates an exclusive privilege and an unlawful monopoly of a common right. And in this, to wit:

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23. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is repugnant to and in conflict with the provisions of section 21 of article 1 of the constitution of the State of California, in that said order, as the same was in said proceedings and decree construed and enforced against appellants, grants and creates an exclusive privilege and an unlawful monopoly of a common right. And in this, to wit:

24. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain resolution of the board of supervisors of the city and county of San— said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution as the same was in said proceedings and decree construed and enforced against appellants is repugnant to and in conflict with the provisions

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of section 21 of article 1 of the constitution of the State of California, in that said resolution, as the same was in said proceedings and decree construed and enforced against appellants, grants and creates an exclusive privilege and an unlawful monopoly of a common right. And in this, to wit:

25. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is an unlawful invasion of appellants' rights and is repugnant to and in conflict with the provisions of section 1 of article 13 of the constitution of the State of California, in
707 that said order, as the same was in said proceedings and decree construed and enforced against appellants, created and imposed an unlawful tax upon the property of appellants, and that without regard to or upon the basis of the value thereof. And in this, to wit:

26. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is an unlawful invasion of appellants' rights and is repugnant to and in conflict with the provisions of section 1 of article 13 of the constitution of the State of California, in that said order, as the same was in said proceedings and decree construed and enforced against appellants, created and imposed an unlawful tax upon the property of appellants, and that without regard to or upon the basis of the value thereof. And in this, to wit:

27. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain resolution of the
708 board of supervisors of the city and county of San Francisco, a municipality of the State of California, said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution, as the same was in said proceedings and decree construed and enforced against appellants is an unlawful invasion of appellants' rights and is repugnant to and in

conflict with the provisions of section 1 of article 13 of the constitution of the State of California, in that said resolution, as the same was in said proceedings and decree construed and enforced against appellants, created and imposed an unlawful tax upon the property of appellants, and that without regard to or upon the basis of the value thereof. And in this, to wit:

28. That by said records and proceeding and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants, is an unlawful invasion of appellants' rights, in that said order, as the same was construed and enforced against appellants, created and imposed a charge, tax, assessment, or
709 burden upon appellants without any power or authority for that purpose in said municipality. And in this, to wit:

29. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants, is an unlawful invasion of appellants' rights, in that said order, as the same was construed and enforced against appellants, created and imposed a charge, tax, assessment or burden upon appellants without any power or authority for that purpose in said municipality. And in this, to wit:

30. That by the records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain resolution of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution, as the same was in said proceedings and decree construed and enforced against appellants, is an unlawful
710 invasion of appellants' rights, in that said resolution, as the same was construed and enforced against appellants, created and imposed a charge, tax, assessment or burden upon appellants without any power or authority for that purpose in said municipality. And in this, to wit:

31. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order is void and of no force or effect for the reason that said order was not enacted or passed by said municipality in conformity to the requirements of the charter of said municipality for that purpose, to wit, in conformity to the requirements of section 68, and the amendments thereto, of an act of the legislature of the State of California, entitled, "An act to repeal the several charters, of the city of San Francisco, to establish the boundaries of the city and county of San Francisco, and to consolidate the government thereof," approved April 19th, 1856, and the acts amendatory thereof, in that said order was not ordered to be published before its final adoption or at all, and was not signed or approved by the mayor of said municipality, and said order
711 at no time received the votes of nine members of the board of supervisors of said municipality. And in this, to wit:

32. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order is void and of no force or effect for the reason that said order was not made by said municipality in accordance with the requirements of the provisions of an act of the legislature of the State of California, entitled "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises," approved March 23d, 1893, in that such privileges and rights as were granted and conferred by said order were not granted to or conferred upon or sold to the highest bidder as is by said act required. And in this, to wit:

33. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a munic-
712 ipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order is void and of no force or effect for the reason that said municipality had no right, power or authority to make or enact said order, in that by the constitution and laws of the State of California,

no right, power or authority to make or enact said order is conferred upon said municipality. And in this, to wit:

34. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of Califordia, said order being known and designated as order No. 2965 of said municipality, which said order is void and of no force or effect for the reason that said municipality had no right, power or authority to make or enact said order, in that by the constitution and laws of the State of California, no right, power or authority to make or enact said order is conferred upon said municipality And in this, to wit:

35. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board
713 of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order is void and of no force or effect for the reason that said municipality had no right, power or authority to make or enact said order, in that no right, or power or authority is conferred upon said municipality by either the constitution or laws of the State of California to make or enact said order. And in this, to wit:

36. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain resolution of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said resolution being known and designated as resolution No. 903 (fourth series) of said municipality, which said resolution is void and of no force or effect for the reason that said municipality had no right, power or authority to make or enact said resolution, in that no right, or power or authority is conferred upon said municipality by either the constitution or laws of the State of California, to make or enact said resolution. And in this, to wit:

37. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceed-
714 ings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a

municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order was in said proceedings and decree construed and enforced as prohibiting the transportation of the articles in said order enumerated out of and beyond the territorial limits of the city and county of San Francisco, whereas, said order was intended to only prohibit and does in fact only prohibit the disposition of the articles in said order enumerated within the territorial limits of said city and county except in the manner in said order specified. And in this, to wit:

38. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order was in said proceedings and decree construed and enforced as prohibiting the transportation of the articles in said order enumerated out of and beyond the territorial limits of the city and county of San Francisco, whereas, said order was intended to only prohibit and does in fact only prohibit the disposition of the articles
715 in said order enumerated within the territorial limits of said city and county except in the manner in said order specified. And in this, to wit:

39. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, whereas, in truth and in fact the provisions of said order do not in any way forbid the acts by said decree enjoined, and in truth and in fact respondents have not performed or attempted to perform or in any way contemplated the performance of any act contrary to or in conflict with the provisions of said order. And in this, to wit:

40. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against

appellants, is an unlawful order and void for the reason that
716 the said order is unreasonable, in that the inhibitions in said order contained, as said order was construed and enforced in said proceedings and decree, are not supported by a reasonable necessity for their exercise, and in that said inhibitions, construed as aforesaid, extend beyond the prevention of any supposed evil and forbid lawful and harmless businesses, pursuits and callings, which cause no evil, and in that the means adopted in said order, construed as aforesaid, are not conducive to the ends by said order sought to be accomplished, and in that said order construed as aforesaid, prohibits the performance of lawful and harmless acts in a proper and harmless manner. And in this, to wit:

41. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, as the same was in said proceedings and decree construed and enforced against appellants is an unlawful order and void for the reason that the said order is unreasonable, in that the inhibitions in said order contained, as said order was construed and enforced in said proceedings and decree, are not supported by a reasonable necessity for their exercise, and in that said inhibitions, con-
717 strued as aforesaid, extend beyond the prevention of any supposed evil and forbid lawful and harmless businesses, pursuits and callings, which cause no evil, and in that the means adopted in said order, construed as aforesaid, are not conducive to the ends by said order sought to be accomplished, and in that said order construed as aforesaid, prohibits the performance of lawful and harmless acts in a proper and harmless manner. And in this, to wit:

42. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 2965 of said municipality, whereas, in truth and in fact any and all rights and privileges which were or at any time had been conferred upon complainant by or under said order had, at and prior to the commencement of said action, ceased and terminated for the reason that by the provisions of section 9 of said order all rights of said complainant under said order were *ipso facto* forfeited and terminated upon the failure of said complainant to fully carry out and faithfully perform the obligations by said order imposed

upon complainant, and in and by said records and proceedings it appears and is established as a fact that complainant continu-
718 ously and designedly charged tolls in excess of the amounts by section 1 of said order allowed and permitted; and continuously and knowingly operated its works in such a manner that smoke, burnt paper and obnoxious smells escaped from the smoke-stack of its works, contrary to the provisions of section 5 of said order; and continuously and knowingly dumped its ashes on lots and streets contrary to the provisions of section 4 of said order. And in this, to wit:

43. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order, was wholly based upon and only operative in conjunction with the continued existence of the rights and privileges sought to be conferred upon complainant by a certain order of said municipality known as order No. 2,965, and any and all rights and privileges which were or at any time had been created or in any way conferred upon complainant by or under said order No. 2,965 had, at and prior to the commencement of said action, ceased and terminated, for the reason that by the provisions of section 9 of said order No. 2,965, all rights of said complainant under said order were *ipso facto* forfeited and ter-
719 minated upon the failure of said complainant to fully carry out and faithfully perform the obligations by said order imposed upon complainant, and in and by said record and proceedings it appears and is established as a fact that complainant continuously and designedly charged tolls in excess of the amounts by section 1 of said order allowed and permitted; and continuously and knowingly operated its works in such a manner that smoke, burnt paper and obnoxious smells escaped from the smokestack of its works, contrary to the provisions of section 5 of said order; and continuously and knowingly dumped its ashes on lots and streets contrary to the provisions of section 4 of said order.

44. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were wholly based and founded upon the provisions of a certain order of the board of supervisors of the city and county of San Francisco, a municipality of the State of California, said order being known and designated as order No. 12 (second series) of said municipality, which said order is a penal order of said municipality and as such is not enforceable in said action. And in this, to wit:

45. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were based
720 and founded upon the claim of complainant that a certain order of the board of supervisors of the city and county of San Francisco, a municipality in the State of California, (said order being known and designated as order No. 2,965 of said municipality) was duly passed and enacted by said municipality, whereas the records and proceedings in said action establish the contrary thereof to be true and establish as a fact that said order was not ordered to be published before its final adoption, and was not in fact published before its final adoption or at all, and was not signed or approved by the mayor of said municipality, and that said order at no time received the votes of nine members of the board of supervisors of said municipality. And in this, to wit:

46. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were based and founded upon the claim of complainant that each and all of the articles named and specifically set forth in the decree awarded to complainant are not articles of commerce or of commercial value or of any value or articles constituting property or articles in which property rights may be had, whereas, the contrary thereof is true, and in and by said proceedings it is established as a fact that said articles are articles of commerce and of commercial value and constitute property and are owned by appellants and are of value to appellants. And in this, to wit:

721 47. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings and decree enforced against appellants were based and founded upon the claim of complainant that the businesses of respondents and each of them in dealing in and in transporting the articles named and specifically set forth in the decree awarded to complainant are not common, regular or ordinary or legitimate businesses or callings and that said businesses were conducted by appellants in an unlawful manner and in a manner harmful to the public, whereas, the contrary thereof is true, and in and by said proceedings it was established as a fact that said businesses of appellants and each of them in dealing in and in transporting said articles are common, regular, ordinary and legitimate businesses and callings of appellants, and that said businesses were conducted by appellants and each of them, in a lawful manner and in a manner not harmful or injurious to the public. And in this, to wit:

48. That by said records and proceedings and decree it appears that the rights and privileges claimed by and by said proceedings and decree awarded to complainant and the remedies in said proceedings

and decree enforced against appellants were based and founded upon the claim of complainant that complainant had fully carried out and faithfully performed the duties and obligations imposed upon complainant by the provisions of a certain order of the board
722 of supervisors of the city and county of San Francisco, a municipal corporation of the State of California, said order being known and designated as order No. 2,965 of said municipality, whereas, the contrary thereof is true, and in and by said proceedings it was established as a fact that complainant had not fully or at all complied with or faithfully performed or performed at all the duties or obligations imposed upon complainant by the provisions of said order, and that complainant had continuously and designedly charged tolls in excess of the amount of section 1 of said order permitted, and had continuously and knowingly operated its works in such a manner that smoke, burnt paper and obnoxious smells escaped from the smokestack of its works, contrary to the provisions of section 5, of said order, and had continuously and knowingly dumped its ashes on lots and streets of said city and county of San Francisco contrary to the provisions of section 4 of said order.

The foregoing errors are assigned in behalf of all of the defendants in said action jointly and also in behalf of each of defendants severally.

Wherefore, appellants pray that said decree may be reversed, and that said court may be directed to enter a decree denying the relief prayed for in complainants' bill.

BLACK & LEAMING,
Solicitors for and of Counsel with Appellant,
The California Reduction Company.
723 PAGE, McCUTCHEN & EELLS,
GARRET W. McENERNEY,
Solicitors and Counsel of Appellants Other Than
The California Reduction Company, a Corporation.

(Endorsed :) Filed June 30, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

At a stated term, to wit, the March term, A. D. 1902, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the courtroom in the city and county of San Francisco, on Monday, the 30th day of June, in the year of our Lord, one thousand, nine hundred and two.

Present: The Honorable William W. Morrow, circuit judge.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
THE CALIFORNIA REDUCTION COMPANY ET AL., Defendants.
No. 12714.

Order Allowing Appeal.

Upon application of E. B. Leaming, Esq., one of the solicitors for defendants, and together with their assignment of errors this day filed herein, it is ordered that defendants be, and hereby are,
724 allowed an appeal to the United States circuit court of appeals for the ninth circuit from the final decree filed and entered herein upon the 7th day of January, 1902; that the amount of the bond to be executed and filed by defendants upon said appeal be, and hereby is, fixed at the sum of five hundred dollars, and that a certified transcript of the record and proceedings herein be transmitted to said United States circuit court of appeals for the ninth circuit.

Bond on Appeal.

Know all men by these presents, that we, the California Reduction Company, a corporation, S. Antonio, M. Cuneo and G. Costa as principals, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Sanitary Reduction Works, a corporation in the full and just sum of five hundred (500) dollars to be paid to the said Sanitary Reduction Works, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of June, in the year of our Lord one thousand, nine hundred and two.

Whereas, lately at a circuit court of the United States, for the northern district of California, in a suit depending in said court between Sanitary Reduction Works of San Francisco, complainant, and The California Reduction Company, a corporation, S.
725 Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Boiselli, A. Brandi, A. Brassi, D. Calemarlair, A. Carporance, C. A. Carlson, C. B. Carcona, D. Cemsangla, G. Cereghino, V. Chiossi, L. Chivghino, F. Compe, L. Consigla, P. Cosstante, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencenzi, P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo, A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frieni, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, G. Lercari, P. Lugi, V. Manliano, G. M. Molinan, E. Motini, P. Mornilli, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, P. Muzio, M. Nava, John Noce, J. Paganini, G.

Paganini, B. Pasqualetti, F. Picollo, C. Pietranova, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, Guiseppe Arata, Luigi Brasetto, Giovanni Caniecia, Giuseppe Consigliere, Antonio Campi, Antonio Cuneo, Giovanni Cagezzio, Luigi Cararo, Luigi Cereghino, Vincinzo Chiosso, Antonio Camicia, Giovanni Cesta, Ginglio Demartini, Paolo Demartini, Angelo Devincenzi, Antonio Delucchi, Bartolomeo Devincenzi, Antonio Dendero, Emiglio Devincenzi, Domenico Delucchi, G. B. Esspesto, Luigi Figeni, Abramo Feretti, G. B. Feppiano, Angelo Ferrari, Giovanni Figeni, Luigi Figeni, Francesco Fraviga, Giovanni Firenze, Antonio Luchitti, Pietro Leonardini, Giovanni Melinari, Eluro Marini, Firpe Michele,
726 Vitterio Muzio, Giacome Muzio, G. B. Mendani, Luigi Muzio, Agostine Muzio, Pietro Mesante, Michele Nave, Domenico Picitti, Domenico Paganini, Lugi Peggi, Andrea Pedesta, Giovanni Pisigeni, Giuseppe Quieretto, Luigi Rappo, Francesco Ratto, and Antonio Tescioma, respondents, a decree was rendered against the said respondents and the said The California Reduction Company and other respondents above-named have prosecuted an appeal from the said decree to the United States circuit court of appeals of the ninth circuit to reverse the decree in the aforesaid suit, and a citation has been issued directed to the said Sanitary Reduction Works of San Francisco citing and admonishing it to be and appear at a United States circuit court of appeals for the ninth circuit, to be holden at San Francisco, in the State of California, on the 28th day of July, next.

Now, the condition of the above obligation is such, that if the said The California Reduction Company and the other respondents above named shall prosecute the said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

[CORPORATE SEAL.] THE CALIFORNIA REDUCTION COMPANY,
By BEHREND JOOST, President,
By JOHN CLEMISHIRE, Secretary.

727 S. ANTONINO, [SEAL.]
M. CUNEO, [SEAL.]
G. COSTA, [SEAL.]
S. ANTONIO, [SEAL.]

By their attorney, CHAS. PAGE.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By C. H. WILSON,
Its Attorney in Fact.

Attest:
[CORPORATE SEAL.] FRANK L. GILBERT,
Its General Agent.

Acknowledged before me the day and year first above written.

[SEAL.] GEO. E. MORSE,
United States Commissioner for the
Northern District of California, San Francisco.

Approved.

WM. W. MORROW, Judge.

(Endorsed:) Filed June 30, 1902. Southard Hoffman, clerk. By W. B. Beaizley, deputy clerk.

728 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

SANITARY REDUCTION WORKS OF SAN FRANCISCO, Complainant,
vs.
CALIFORNIA REDUCTION COMPANY ET AL., Respondents. } No. 12714.

Clerk's Certificate to Transcript of Record.

I, Southard Hoffman, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing seven hundred and nineteen (719) pages, numbered from 1 to 719, inclusive, to be a full, true and correct copy of the record and of the proceedings in the above and therein entitled cause, and that the same constitute the transcript on appeal to the United States circuit court of appeals for the ninth circuit.

I further certify, that the cost of the foregoing transcript of record on appeal is $421.20, that the same was paid by the attorneys for the respondents; that all opinions of the court are contained in said record, and that the original citation issued herein is hereto annexed.

729 In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, this 23d day of August, A. D. 1902.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of the United States Circuit Court,
Ninth Judicial Circuit, Northern District of California.

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to The Sanitary Reduction Works of San Francisco, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, for the ninth circuit, to be holden at the city of San Francisco, in the State of California, on the 28th day of July, 1902, being within thirty days from the date hereof, pursuant to an order allowing appeal entered in the clerk's office of the circuit court of the United States, for the northern district of California, wherein The California Reduction Company (a corporation), S. Antonio, D. Arkillo, A. Bacigalupi, A. Baciocco, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Biasotti, F. Bioselli, A. Brandi, A. Brassi, D. Calemarlair, A. Caporance, C. A. Carlson, C. B. Carcona, D. Gemsnagla, G. Cereghino, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Constante, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencinzi,
P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo,
730 A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, G. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Motini, P. Mornillo, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, M. Nava, John Mooe, J. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, F. Ratto, G. B. Ratto, L. Ratto, A. Renote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, Giuseppe Arata, sued herein as First Italian, Luigi Brassetto, sued herein as Second Italian, Giovanni Caniecia, sued herein as Third Italian, Giuseppe Gensigliere, sued herein as Fourth Italian, Antonio Campi, sued herein as Fifth Italian, Antonio Cuneo, sued herein as Sixth Italian, Giovanni Cagezzio, sued herein as Seventh Italian, Luigi Cararo, sued herein as Eighth Italian, Luigi, Cereghino, sued herein as Ninth Italian, Vincinzo Chiossi, sued herein as Tenth Italian, Antonio Camicia, sued herein as Eleventh Italian, Giovanni Cesta, sued herein as Twelfth Italian, Ginglio Demartini, sued herein as Thirteenth Italian, Paolo Demartini, sued herein as Fourteenth Italian, Angelo Devincenzi, sued herein as Sixteenth Italian, Bartolomeo Devincenzi, sued herein as Seventeenth Italian, Antonio Dendero, sued herein as Eighteenth Italian, Emiglio Devincenzi, sued herein as Nineteenth Italian, Domenico Delucchi, sued herein as Twentieth Italian, G. B. Espesto, sued herein as Twenty-first Italian, Luigi Figeni, sued herein as Twenty-second Italian, Abramo Ferretti, sued herein as
Twenty-third Italian, G. B. Feppiana, sued herein as Twenty-
731 fourth Italian, Angelo Ferrarri, sued herein as Twenty-fifth Italian, Giovanni Figeni, sued herein as Twenty-sixth Italian,

Luigi Figeni, sued herein as Twenty-seventh Italian, Francesco Fraviga, sued herein as Twenty-eighth Italian, Giovanni Firpo, sued herein as Twenty-ninth Italian, Antonio Luchitti, sued herein as Thirtieth Italian, Pietro Leonardino, sued herein as Thirty-first Italian, Giovanni Melinari, sued herein as Thirty-second Italian, Eluro Marini, sued herein as Thirty-third Italian, Firpe Michele, sued herein as Thirty-fourth Italian, Viterrio Muzio, sued herein as Thirty-fifth Italian, Giacomo Muzio, sued herein as Thirty-sixth Italian, G. B. Mendani, sued herein as Thirty-seventh Italian, Luigi Muzio, sued herein as Thirty-eighth Italian, Agostine Muzio, sued herein as Thirty-ninth Italian, Pietro Mesanta, sued herein as Fortieth Italian, Michele Nave, sued herein as Forty-first Italian, Domenico Picetti, sued herein as Forty-second Italian, Domenico Paganini, sued herein as Forty-third Italian, Luigi Peggi, sued herein as Forty-fourth Italian, Andrea Pedesta, sued herein as Forty-fifth Italian, Giovanni Pisigeni, sued herein as Forty-sixth Italian, Giuseppe Quieretto, sued herein as Forty-seventh Italian, Luigi Rappo, sued herein as Forty-eighth Italian, Francesco Ratto, sued herein as Forty-ninth Italian, Antonio Tescioma, sued herein as Fiftieth Italian, are appellants and you are appellee to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

732 Witness, the Honorable William Morrow, United States circuit judge for the ninth judicial circuit, this 30th day of June, A. D. 1902.

WM. W. MORROW,
United States Circuit Judge.

Received a copy June 30, 1902.

C. L. TILDEN,
Per W. H. P.,
Of Counsel for Complainant.

(Endorsed:) No. 12,714. In the United States court, ninth judicial circuit court, northern district, State of California. The Sanitary Reduction Works of San Francisco, plaintiff, *vs.* The California Reduction Company *et al.*, defendant. Citation. Due service of the within citation at the city and county of San Francisco on the 30th day of June, 1902, is hereby admitted. Pierson & Mitchell, W. M. Pierson, I. A. Persy, attorneys for complainants. Filed July 1, 1902. Southard Hoffman, clerk. By W. B. Beaizley deputy clerk.

(Endorsed:) No. 901. United States circuit court of appeals for the ninth circuit. California Reduction Company *et al.*, appellants, *vs.* Sanitary Reduction Works of San Francisco, appellee. Transcript of record. Upon appeal from the United States circuit court for the northern district of California. Filed October 1, 1902. F. D. Monckton, clerk.

733 & 734 Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

735 At a stated term, to wit, the October term, A. D. 1902, of the United States circuit court of appeals for the ninth circuit, held at the courtroom, in the city and county of San Francisco, on Thursday, the twenty-first day of May, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

THE CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee.
} No. 901.

Order of Submission.

Ordered, appeal argued by Garret W. McEnerney, Esquire, counsel for the appellants, and William M. Pierson, Esquire, counsel for the appellee, and submitted to the court for consideration and decision, with leave to counsel for the respective parties to file
736 further briefs.

In the United States Circuit Court of Appeals for the Ninth Circuit.

CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee.
} No. 901.

Opinion U. S. C. C. A.

Appeal from the United States Circuit Court for the Northern District of California.

Page, McCutchen, Harding & Knight, and Garret W. McEnerney, for appellants.
William M. Pierson, and C. L. Tilden, for appellee.

Before Gilbert and Ross, Circuit Judges, and Hawley, District Judge.

HAWLEY, District Judge:

This is a suit in equity brought by the Sanitary Reduction Works of San Francisco to obtain an injunction to prevent the California Reduction Company *et al.*, from removing any of the substances or

materials named in the complaint, and to restrain them from infringing upon the exclusive rights and privileges of appellee under certain orders, in the cremation of deleterious matters. The Sanitary Reduction Works is a California corporation engaged in
737 the business of incinerating house refuse and garbage at San Francisco in a large crematory owned and operated by it. The California Reduction Company is a Colorado corporation organized for the purpose of removing from the city and county of San Francisco by boats and barges, house refuse and garbage for destruction and disposition outside the city and county of San Francisco. The other defendants, about one hundred and forty in number, are subjects of the King of Italy, and pursue the occupation of scavengers in San Francisco and about half a dozen of them are shown to be householders in the city of San Francisco.

A preliminary injunction, in accordance with the prayer of the bill of complaint, was issued by the court May 25, 1899. (The Sanitary Reduction Works of San Francisco *vs.* The California Reduction Company *et al.*, 94 Fed. 693.) The cause came up for final hearing, and resulted in a decree perpetually enjoining and restraining the respondents (appellants herein), and all of them "from directly or indirectly removing from the city and county of San Francisco, State of California, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones, and other like matter, dead animals, putrid vegetable matter, or such fish, flesh or food as may be condemned by the board of health of said city and county as unfit for human food, as specified in order No. 2965, or in order No. 12 (second series), of the board of supervisors of the said city and county of San Francisco, State of California, set forth in the bill of complaint herein, and from depositing or
738 dumping at any other place in said city and county of San Francisco, save and except at the works, buildings and crematories of the complainant herein in said city and county of San Francisco, any of the house refuse or other materials hereinbefore described, during the life and term of the contract and franchise belonging to the complainant as alleged in the bill of complaint herein, and from obstructing, hindering, or in any way interfering with said complainant in the delivery of it, or in the incineration and cremation by it of any of the house refuse or other materials mentioned and described in said orders and ordinances and in the bill of complaint herein, and from diverting from the complainant any of said house refuse or other materials and from infringing in any manner upon the rights, privileges or franchises secured to said complainant by the aforesaid orders or ordinances, and from interfering with said complainant in the performance of any of its duties under said orders or ordinances."

From this decree the appeal herein is taken.

The constitution of California, article XI, section 11, provides that "Any county, city, town, or township may make and enforce, within its limits, all such local, police, sanitary and other regulations as

are not in conflict with general laws." The legislature of the State by an act approved April 25, 1863, provided, among other things, that "The board of supervisors of the city and county of San Francisco, shall have power, by regulation or order, * * * 2d. To authorize and direct the summary abatement of nuisances;
739 to make all regulations which may be necessary or expedient for the preservation of the public health and the prevention of contagious diseases; to provide by regulation for the prevention and summary removal of all nuisances and obstructions in the streets, alleys, highways and public grounds of said city and county, and to prevent or regulate the running at large of dogs, and to authorize the destruction of the same when at large contrary to ordinance." (Stats. 1863, 540.)

On March 23, 1893, the legislature passed "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises," by which it was provided among other things, that "Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate railroads along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by the board of supervisors," etc., should be granted upon the conditions in that act provided, and not otherwise. The act also provided for an advertisement of the fact that an application for such franchise or privilege has been made, asking for bids for the same, and providing for the award of the franchise or privilege to the highest bidder. (Stats. 1893, 288.)

On February 17, 1896, the board of supervisors sold to F. E. Sharon, his associates and assigns, under the provisions of the act of the legislature just referred to, in consideration of $2,510, and the further payment of two per cent. for the term of fifteen years and of
740 five per cent. for the remaining term of thirty-five years of the gross amount of the receipts to be derived by said Sharon, his associates or assigns, the franchise and privilege to cremate garbage, house refuse, dead animals and putrid vegetable matter and material of a like character, in which franchise it was provided, that the sole and exclusive right and privilege was thereby conferred upon and granted to F. E. Sharon, his associates and assigns, for the term of fifty years to cremate and destroy within the city and county aforesaid, by crematories or by a process of reduction, house refuse, etc., as mentioned in the decree, and prohibiting the removal through the public streets, after the passage of the order, from any houses, hotels, markets, etc., any such matter unless conveyed in closed vehicles constructed so as to conceal the contents from public view, and to prevent any smell escaping therefrom, and to prevent the dropping of any such material or substance on the public streets, and further prohibiting any person or corporation from dumping or placing upon any land within said city and county or in any water or waterways within said city and county any of the matter aforesaid, except at the crematory of the grantee of the franchise; and further

that all such matter and substances should be cremated by the grantee of the franchise within twenty-four hours after its receipt of the same. The appellee, as the grantee of F. E. Sharon, under the provisions of order No. 2965, completed the construction of a large brick crematory and fitted it for the purpose of cremating and destroying by fire all of the materials mentioned in that order, at the cost of about one hundred and eighty
741 thousand dollars. It notified the board of supervisors of the completion of its plant, and of its readiness to receive, cremate and destroy the substances mentioned in order No. 2965. The board of supervisors passed an order known as order No. 12 (second series), which after reciting several facts which led up to the passage of order No. 2965, passed February 17, 1896, provided, that no person, company, or corporation should, after the 8th of November, 1897, deposit, dump, or cause to be dumped or deposited upon any lot or land within the city and county, excepting at the crematory of the Sanitary Reduction Works, any of the garbage, refuse matter, etc., referred to in said order, and further provided a fine and imprisonment for any violation of the provisions of the order.

The contention of appellant is, in substance, to the effect that the appellee's exclusive privilege of incinerating house refuse and garbage in San Francisco is invalid. (1.) That the right or privilege claimed by the complainant could only be granted, if at all, under the police power of the municipality; (2) that order No. 2965 was never signed by the mayor of the city and county of San Francisco, and was, therefore, never lawfully enacted; (3) that the act of March 23, 1893 (Stats. Cal. 1893, 288), has no application to this case for the reason that the right and privilege claimed is in no sense a franchise; (4) that if the right and privilege claimed by the complainant be a franchise, there is no authority of law for the granting of such a franchise by the city and county of San Francisco; (5)
742 that the act of March 23, 1893, confers no authority to grant franchises, that it was intended to limit the power to grant franchises which had been given by laws previously passed; (6) that there is no authority of law for the granting of an exclusive franchise; (7) that there is no authority of law for the imposition of the compulsory payment of twenty cents a cubic yard upon the householders of the city and county of San Francisco; (8) that the grant was invalid under article I, section 21 of the constitution of California, which provides that no citizen or class of citizens shall "be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens;" (9) that if the privilege claimed by appellants is authorized by the act of March 23, 1893, the grant thereof is void for the reason that it never received the approval of the mayor, as required by section 68 of the so-called consolidation act, the old charter of the city and county of San Francisco; (10) that if the privilege claimed by appellee is authorized by the act of March 23, 1893, the grant thereof is void for the reason that the privilege was not sold to the highest bidder, as required by the act

of March 23, 1893; (11) that the privilege claimed by the complainant is invalid because the board of supervisors was without power to grant it for the unreasonable period of fifty years; (12) that the grant of the privilege claimed is unreasonable and invalid because it interferes with the exercise of the legitimate calling of transporting house refuse and garbage; (13) that it is invalid because it deprives the owner thereof of property of commercial value without any
743 necessity and without compensation; (14) that it is unreasonable and invalid because it is an invasion of a right common to all to engage in a legitimate business of burning garbage; (15) that it is unreasonable and invalid because there is no necessity to prevent the removal of house refuse and garbage from the municipality for destruction or disposition elsewhere; (16) that it is unreasonable because it prohibits the performance of a harmless act in a proper and harmless manner; (17) that it does not prohibit the transportation of house refuse and garbage beyond the territorial limits of the municipality; (18) that the right claimed has been forfeited by reason of overcharging by the complainant for the destruction of the substances enumerated; (19) that the right claimed has been forfeited because in the enjoyment thereof, the appellee is maintaining a nuisance; (20) that if the grant of the privilege claimed by the complainant is a franchise, the respondents are entitled to defend on the ground that there has been no grant of such a franchise, or that the franchise has been forfeited and no longer exists.

It must be admitted that the power of the legislature or municipality, under what is commonly designated as the police power of the State, is not absolute. It does not necessarily follow that every statute which may be enacted by the legislature, or order passed by a municipality, ostensibly for the purpose of preserving the public health, protecting the public morals and guarding the public safety, is always to be accepted as a legitimate exercise of the police
744 power of a State. Neither the legislature nor municipality can, under the guise of police regulations, arbitrarily invade private property or personal rights, and when such regulations are called in question the test should be whether they have some relation to the public health or public safety, and whether such is, in fact, the end sought to be attained. The means used must be such as are reasonably necessary for the accomplishment of the purpose, and must not be unduly oppressive upon individuals or the public. Every act, order, or ordinance is subject to review by the courts, and if the power granted by the constitution is exceeded by the legislature or municipality, it is the duty of the courts to declare such act, order, or ordinance invalid. Under the guise of protecting the public interests, neither the legislature nor the municipality can arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful business and occupations. The police power cannot be used as a shield for all the ills that legislation is heir to, but it must be recognized that the power and pur-

poses of laws of this character are necessarily very broad and far-reaching, and if the power granted does not exceed the limits of the constitution, and clearly comes within the legitimate exercise of the police power, it should be sustained. It may be that it is impractical, if not impossible, to definitely prescribe the limits of the police power by any general rule or definition. As was said by Chief Justice Shaw in Commonwealth *vs.* Alger, 7 Cush. 84: "It is much easier to perceive and realize the existence and sources of this power than to mark
745 its boundaries or prescribe limits to its exercise." (18 Am. & Eng. Ency. L. (2 ed.), 915, and authorities there cited.) One thing, however, is certain, that everything, which, from its nature and surroundings is, or is liable to become, a menace to the public health or public safety, is a proper subject to be dealt with under the police power of a State. This case comes within that class. The power to make the law necessarily carries with it the power to judge of its necessity, expediency and justice, and, primarily at least, of the reasonableness of the means and methods used to accomplish the end sought to be obtained. Courts have nothing to do with the wisdom, policy or expediency of the law. The courts are only authorized to deal with the question of the power of the legislature or municipality to pass the laws or orders in question, and determine whether they are valid, and if so, to construe their provisions. There their duty ends. These general principles are axiomatic in the jurisprudence of this country.

Mugler *vs.* Kansas, 123 U. S. 623, 661;
Powell *vs.* Pennsylvania, 127 U. S. 678, 685;
Kidd *vs.* Pearson, 128 U. S. 1;
Lawton *vs.* Steele, 152 U. S. 133, 136;
In re Wilshire, 103 Fed. 620, 622, and authorities there cited;
Jew Ho *vs.* Williamson, 103 Fed. 10, 17, 20;
Iler *vs.* Ross, 90 N. W. 869.

Appellee, in support of the constitutionality of its contract
746 with the city and the validity of the orders of the municipality upon which it is based, relies upon the principles announced in Alpers *vs.* City and County of San Francisco, 32 Fed. 503; National Fertilizer Co. *vs.* Lambert, 48 Fed. 458, and in the Slaughter-house cases, 16 Wall. 36, 64.

In the Alpers case, Mr. Justice Fields, in upholding the constitutionality of the "dead animal contract," said: "There is no doubt that the contract between the plaintiff and the city and county of San Francisco is one within the competency of the municipality to make. It is within the power of all such bodies to provide for the health of their inhabitants by causing the removal from their limits of all dead animals not slain for human food, which otherwise would soon decay, and, by corrupting the air, engender disease. And provisions for such removal may be made by contract, as well as the performance of any other duty touching the health and comfort of the city; its authorities always preserving such control over the

matter as to secure an observance of proper sanitary regulations." And, in addition to this general power, he referred to article XI, section 11, of the Constitution, and to the provisions of the consolidation act of 1863.

In the Lambert case, the court, in answer to the objections made that the contract attempted to create a monopoly, that it was in violation of section 21 of article I of the constitution of California, and that it deprived persons of their property without due process of law, said: "It is the duty of every government, whether State or
747 municipal, to pass laws or ordinances for preserving the public health, protecting the good order and peace of society, and providing for the abatement of nuisances. Such laws, if they contain nothing more than the necessary restrictions and limitations for the accomplishment of such purposes, are not unconstitutional on the ground that they deprive persons of their property without due process of law. Quarantine regulations, for instance, materially interfere with free and unobstructed use of private property, and for the time being restrain, to a certain extent, the liberty of individuals. Yet the health, safety and welfare of the community often demand their enforcement; and such laws have always been upheld as necessary police regulations. Several other instances might be cited where laws of a similar character are sustained; but the authorities are too numerous, and the general principles of law too well settled, to require any extended reference or review. No person has an inalienable right to produce disease, or trade in that which is noxious; and in every community, large or small, some minor rights of individuals must be surrendered for the benefit, protection, health and general good of all."

These decisions may not be absolutely decisive of all the questions relied upon by appellants, but the principles therein announced are certainly conclusive upon many of the points involved in this case. The authorities, if any are needed, to support these views are abundant. We cite, in addition to those already referred to, a few of the later cases on the subject:

748 Walker *vs.* Jameson, 140 Ind. 591;
Smiley *vs.* MacDonald, 42 Neb. 5, 13;
Harrington *vs.* City of Providence (R. I.), 38 L. R. A. 305;
Ex parte Tuttle, 91 Cal. 589, 591;
Ex parte Lacey, 108 Cal. 336;
City of Louisville *vs.* Wible, 84 Ky. 290, 294;
State *vs.* Orr, 68 Con. 101, 110;
City of Grand Rapids *vs.* De Vries, 123 Mich. 570, 580, 583;
Kilvington *vs.* City of Superior, 83 Wis. 222, 226; 18 Am. & Eng. Ency. L. (2 ed.), 922, 940, and authorities there cited.

In Walker *vs.* Jameson, *supra*, the court had under consideration the validity of a contract made by the board of public works of the city of Indianapolis, clothing one Woodward with the exclusive

right, privilege and obligation to remove the garbage, etc., from the premises of all persons in the city, and to transport the same to a crematory. This contract was let to the lowest bidder, and afterwards assigned to Jameson, who brought suit to enjoin appellants from interfering with or removing such garbage, etc. Appellant there, as here, contended that the contract was invalid because the board of public works had no authority to make it. The court discussed all the points made by counsel, and in the course of the opinion declared, that it was within the general power of the government to preserve and promote the public welfare even at the expense of private rights; that under the police power of the State per-
749 sons and property may be subjected to all kinds of restraints and diligence in order to secure the general comfort, health and prosperity of the State, and that it is the inherent and plenary power of the State, which enables it to prohibit all things hurtful to the comfort and welfare of society; that it resolves itself solely into a question of power and not of mere reasonableness; that a municipal corporation has no power to treat a thing as a nuisance which can not be one, but it has the power to treat as a nuisance a thing that, from its character, location and surroundings, may, or does become such; that in doubtful cases, where a thing may or may not be a nuisance, depending upon a variety of circumstances requiring judgment and discretion on the part of the town authorities in exercising their legislative functions, under a general delegation of power, their action, under such circumstances, would be conclusive of the question; that it has been often held to be reasonable for municipalities to grant to one or more the exclusive right to remove the carcasses of dead animals, and other offal of the city; and in summing up said: "In view of the great weight of authorities, we are of the opinion that the contract and ordinance assailed are both within the long settled and clearly recognized lines of police power, which is as broad as the power of taxation, and being simply a sanitary regulation, they cannot be considered as in the nature of confiscation or an attempt to create a monopoly. The provision for the removal of the garbage at the expense of the property holder is an extreme exercise of this power, but is an in-
750 cident to its existence. It is a familiar rule that if the power is conferred upon a municipal corporation by the laws of the State and the law is silent as to the mode of doing such act, the corporate authorities are necessarily clothed with a reasonable discretion to determine the manner in which such act shall be done; all the reasonable methods of executing such power are inferred. * * * The right of removal by contract or otherwise being vested in the city, it was for the common council to determine whether the work should be paid for out of the city treasury or by the person producing the garbage, and their action is not subject to review here. It may be that the hotel and restaurant keepers will lose money on their garbage under the workings of this contract, where they before derived a revenue, but if, under this plan, the sources of conta

gion and disease will be more speedily and effectively removed, the city was empowered to make this contract."

The opinion of Mr. Justice Miller, speaking for a majority of the court in the Slaughter-house cases, contains perhaps a clearer and stronger expression of opinion in relation to the subject under consideration than any of the other cases we have referred to. Its full force and effect, as applicable to the case in hand, is materially strengthened by reference to the language used by Mr. Justice Bradley and Mr. Justice Field (who dissented from the majority), in their concurring opinion in Bartmeyer *vs.* Iowa, 18 Wall. 129, 136, 138. Mr. Justice Field said: "No one has ever pretended, that I am aware of, that the fourteenth amendment interferes in any re-
751 spect with the police power of the State. Certainly no one who desires to give to that amendment its legitimate operation has ever asserted for it any such effect. It was not adopted for any such purpose. The judges who dissented from the opinion of the majority of the court in the Slaughter-house cases, never contended for any such position. But, on the contrary, they recognized the power of the State in its fullest extent, observing that it embraced all regulations affecting the health, good order, morals, peace, and safety of society, that all sorts of restrictions and burdens were imposed under it, and that when these were not in conflict with any constitutional prohibition or fundamental principles, they could not be successfully assailed in a judicial tribunal."

The municipality of San Francisco had authority under the provisions of section 1 of the act of 1863, "by regulation or order— * * * To authorize and direct the summary abatement of nuisances; to make all regulations which may be necessary or expedient for the preservation of the public health, and the prevention of contagious diseases; to provide by regulation for the prevention and summary removal of all nuisances," etc. (Stat. 1863, 540.) And by the constitution of the State, article XI, sec. 11, it has the power to "make and enforce all such local, police, sanitary, and other regulations as are not in conflict with general laws." It had the power, as was held in the Slaughter-house cases, and in many of the other cases which we have cited, itself to regulate the re-
752 moval and disposition of all garbage and refuse matter, and having this authority, it naturally follows that it had the power to contract with others to perform that duty.

The general principles we have announced, and several of the authorities we have cited, furnish an answer to appellants' contention that the board of supervisors had no authority to confer an exclusive privilege or franchise. This question was involved in the Alpers and Lambert cases, where a similar contract was upheld.

See, also, Slaughter-house cases, *supra*;
Louisville Gas Co. *vs.* Citizens' Gas Co., 115 U. S. 683, 691.

In Smiley *vs.* McDonald, *supra*, it was claimed that the grant—which was practically the same as in the present case—was in vio-

lation of the constitution of Nebraska, which prohibits the grant to any corporation or individual of "any special or exclusive privileges or immunity or franchise whatever." The court in the course of its opinion said: "The removal of the obnoxious and unwholesome matter mentioned in the contract tends directly to promote the public health, comfort and welfare, and is, therefore, a proper exercise of the police power. Nor is the fact that in this instance the city has by contract conferred an exclusive privilege material. From the power thus conferred upon the city is implied the duty to determine the means and agencies best adapted to the end in view. The means adopted appear to be not only a reasonable and necessary regulation, but a judicious exercise of the discretion conferred upon the city. That the object of all such regulations can be best
753 attained by entrusting the work in hand to a responsible contractor who possesses the facilities for carrying it on with dispatch and with the least possible inconvenience to the public is apparent to all. * * * The alleged excess of power is a mere sanitary measure, as obviously so as the familiar and necessary quarantine for the detention of persons exposed to contagious diseases. In either case, the privilege, although exclusive, is but an incident to the proper exercise of the general police power of the State."

The question as to the reasonableness of granting the exclusive franchise for fifty years is one upon which there may be honest differences of opinion. Courts cannot, in the determination of this question, run a race of opinion upon points of reason and expediency with the law-making power. No iron-clad rule can be laid down to determine where the discretion of the board ceases and where the power and authority of the court to declare the action of the board unreasonable, begins. The border line must be ascertained by the facts, conditions and circumstances surrounding the subject matter in every particular case. The board in the present case exercised its best judgment in passing order No. 2965, and included therein such terms and conditions as it deemed necessary for the protection of the public health, safety and welfare. It was authorized by the laws of the State to make the contract in question; it was required to act with sound discretion as to the methods and terms. With the honest and reasonable exercise of this au-
754 thority, a court has no right to interfere, although the board may not have chosen the best method or made the most advantageous contract in relation to the subject matter. It is only in cases where it clearly appears that the board has exceeded its authority, or acted arbitrarily, oppressively and unjustly in the exercise of its discretion, that a court is called upon to act. When we take into consideration, as we must, the large expense to be incurred by appellee in the building of its crematory, and the protection and benefit to be derived by the city and its inhabitants, we are unwilling to say that the term of fifty years for the life of the contract is so unreasonable as to authorize, warrant, or justify us, in

the light of all the authorities and of all the facts, to declare the order void.

It is argued that the privilege claimed by appellee is unreasonable and invalid because it interferes with the legitimate calling and occupation of the scavengers, appellants herein. It is true that all persons engaged in lawful occupations, whether rich or poor, whether of high or low degree, are entitled to certain inalienable rights of life, liberty and property. The scavengers of a city are equally entitled with other citizens engaged in other lawful occupations, to the equal protection of the law. The right to follow any of the ordinary callings of life is a privilege which belongs to all; but these inalienable rights and privileges are always subject to the rights of the State or municipality to exercise its police power. The orders of the municipality do not deny to the scavengers the right to exercise their lawful trade or calling, or impose any burdens
755 upon them which are beyond the power of the municipality to make. The privileges granted do not destroy the business of the scavengers as a class. All men who are engaged in lawful occupations, in the enjoyment of their rights are liable to be subjected to many restraints. They must use all their property and conduct their business so as not to injure the rights of others. They must obey the laws of the country in which they live. Private interests must often be made subservient to the general interest of the community at large. The life and health of the citizens in a populated community depend, to a great extent, upon the sanitary regulations imposed under a proper exercise of the police power, which extends to the protection of the life, health and comfort of the citizens, and it is elementary that persons and property may be subjected to all kinds of restraints and burdens in order to secure and protect public health and public safety.

In Lawton *vs.* Steele, *supra*, the court said: "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything essential to the public safety, health and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance." And after citing many occupations and business and circumstances under which this power may be lawfully exercised, adds: "Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the
756 legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."

Appellants cite *In re* Lowe, 54 Kan. 757 (among others), in support of their position. An examination of the authorities proves the correctness of the statement made in the notes to Smiley *vs.* MacDonald, 27 L. R. A. 540, that the case of *In re* Lowe "seems to stand alone in so far as it holds that the regulations for the removal of

garbage and filth from a city must leave a way open to every person who will comply with the ordinance to engage, at least in so much of the business of scavengers as relates to entering on private property and removing the filth and garbage therefrom."

Iler *vs.* Ross, *supra*, was an extreme case where the principles announced in the Lowe case were applied; but the court said that the application as made to the facts of that case "is not supported by the weight of authority."

As a matter of fact, the scavengers in this case are not enjoined from "entering on private property and removing filth and garbage therefrom." The object sought to be accomplished in this suit is to enjoin appellants from diverting from the crematory of appellee in the city and county of San Francisco the garbage, waste and refuse within the city, which the scavengers collect in the prosecution of their business. This does not deprive them of the right to collect the garbage, but does prevent them from interfering with
757 the right given by the city to dispose of it in any other way than by dumping or delivering it at appellee's crematory.

Certain questions have been ably argued by the respective counsel, which in the light of the views we have already expressed and entertain concerning this case, may be briefly disposed of.

Appellants earnestly contend that if the contract should be held valid under the police power of the State, yet the right and privilege claimed by appellee is no sense a franchise; that the question whether the right and privilege granted by the municipality is a franchise, "is one of the most important questions in the case," because without such a determination, it is impossible to decide many of the other questions involved herein.

It was held by the trial court in granting the preliminary injunction that the contract in question was a franchise, and as such could be maintained under the provisions of the act approved March 23, 1893 (Stat. 1893, 288), heretofore referred to. The conclusions reached by the court upon this subject are supported by the decision of the supreme court of California in Dean *vs.* Board of Supervisors, 122 Cal. 421, and, inasmuch as we have arrived at the conclusion that the rights and privileges conferred by the board were constitutional and valid in the proper exercise of the police power of the State, and could be sustained as a contract, it seems to us unnecessary to further discuss the question whether it could also be upheld and maintained as a franchise. The term "franchise" has several significations, and there is some confusion in its use. We
758 might concede, for the purposes of this opinion, that the rights and privileges conferred upon appellee are not, in the strict sense of the term, a franchise, yet it must certainly be admitted that they are special rights and privileges in the nature of a franchise, which create a valid contract which the courts should sustain.

Order No. 2965 is claimed to be invalid because it was not signed by the mayor as required by the act of 1893, and in this connection

it is claimed that the words found in the statutes of California "by regulation or order" are synonymous with the words elsewhere used "ordinance and resolution." Admitting that these words may often be used to express the same meaning, it does not necessarily follow that in all cases the word "order" is synonymous with "ordinance," or that the word "resolution" is synonymous with "regulation." It is enough to say that by section 1 of the act of 1863, the municipality was authorized to proceed under the police power "by order and regulation" to do the things mentioned in order No. 2965, and order No. 12 (second series).

In People *vs.* Counts, 89 Cal. 15, 22, it was claimed that the board should have proceeded by ordinance, and not by order. The court said: "Conceding that the county government act for some purposes requires an ordinance, whilst for other purposes only an order is required, it is only necessary in answer to this objection to say that for the purpose under consideration section 37 of the act requires the board to do what it is thereby required to do 'by order.'"

Appellants contend that it is the duty of this court in this
759 suit to determine seriatim all the specific and repeated objections made by them to the regularity and alleged illegality of the proceedings taken by the municipality which resulted in the making of the contract or sale of the exclusive franchise to Sharon and his assigns; whether the order was published as required by law; whether the privilege granted was sold to the highest bidder, etc., etc. Can any of these questions be raised or determined in collateral proceedings? Are appellants in a position to question any of these matters in this suit? In the consideration of these questions it must be remembered that appellee did not obtain its franchise from appellants. Its rights and privileges were obtained from the municipality of the city and county of San Francisco.

In Stedman *vs.* City of Berlin, 97 Wis. 505, 509, which was an action by an individual to declare a certain franchise and contract granted and entered into by the city for the construction of waterworks, null and void, as beyond the power of the city to make such grant, and to enjoin the city from carrying out the provisions thereof, it was contended by counsel that the franchise and ordinance were illegal and void, because the franchise was not published as required by the statute. The court said: "We are not called on to determine whether the franchise is void for the want of such publication or for the irregularities pointed out. The contract it appears had been completed before this action had been commenced, and the defendant Wheeler had acted under it. * * *
760 The remedy to set aside a franchise irregularly or fraudulently granted, where the party to whom it has been granted is in the exercise of the privilege it confers, is by *quo warranto* or *scire facias* at the suit of the State, and not by an equitable action at the suit of private parties. * * * The method of taking advantage of mistakes, irregularities and illegalities in granting such a franchise is the same substantially as in respect to the formation of

corporations, as to which the rule now is with few exceptions, that no one can question the regularity of an incorporation except the State, where the statute allows an incorporation and the company has endeavored to incorporate and is acting as a corporation. 1 Cook, Stock (3d ed.); sec. 5, and cases cited. The weight of authority is against the remedy in equity in such cases. * * * The granting of a franchise creates a contract between the State and the grantee, and whether the latter has complied with the conditions is a question of fact to be judicially determined. The State can waive strict compliance, and may elect whether or not it will insist upon a forfeiture. The remedy is granted for the injury to the public, and, thought there may be an irregularity or mistake, it will not be granted as of course, but only when the public interest demands it."

City of Ashland *v.* Wheeler, 88 Wis. 607, 617;
Booth St. Ry. Law, sec. 44.

In Truckee & T. T. R. Co. *vs.* Campbell, 44 Cal. 89, 91, the plaintiff brought an action to recover tolls, and the defendant contested its right to recover on the ground that the plaintiff was not
761 entitled to its franchise because of certain alleged errors and irregularities in the proceedings of the board granting the franchise. The trial court granted a nonsuit, and the plaintiff appealed. The Supreme Court reversed the judgment. In the course of the opinion, the court said: "It will not be contended that the board did not possess competent authority to determine whether all the requisite facts existed, and whether the corporation had performed all the acts necessary on its part, to entitle it to a grant of the right to collect tolls. The authority of the board being conceded, the question whether the board erred in its exercise cannot be raised by a private person; and clearly the inquiry will not be entertained in a collateral proceeding. A grant of such a franchise by a board of supervisors, has the same standing in respect to its validity, the presumptions in its favor, and the mode in which it may be attacked, as a grant of any other right, privilege, or thing made by any department of the Government under the authority of law. And the rule in all such cases, is that the grant is not liable to be attacked by a private person, or in a collateral proceeding, for mere error in the exercise of the authority to make the grant. The inquiry as to whether the plaintiff had properly constructed its road, or whether such road occupied in part a public road, was involved in the proceeding, which resulted in the order of the board granting to the plaintiff the franchise, and the determination of the board in respect to those questions of fact, is conclusive in this action, and the defendant will not be permitted to allege or show that the board
762 erred in its determination. (Leese *vs.* Clark, 18 Cal. 535; Leese *vs.* Clark, 20 Cal. 387; Bond *vs.* Hickman, 29 Cal. 480; Bernal *v.* Lynch, 36 Cal. 135; Durfee *vs.* Plainsted, 38 Cal. 80; Ang. & Ames on Corp., sec. 636.")

Has the right and privilege claimed by appellee herein been for-

forfeited by reason of any act upon its part in overcharging for the destruction of the refuse, garbage, etc., or because appellee in the enjoyment of its privileges, is maintaining a nuisance? Is this court authorized in this suit to determine whether or not appellee has been guilty of overcharging for cremating the substances heretofore enumerated, and to determine whether or not appellee has continuously or at all operated its works in such a manner as to create a nuisance? The duties imposed upon appellee, as assignee of Sharon, were for the protection of the municipality granting the privileges.

Section 5 of order No. 2965 declares that, "The said grantees, their associates and assigns, on receipt of any of the material or substances specified in this order, shall within twenty-four hours thereafter cremate or reduce the same, or shall subject the same to such process as will secure the complete combustion of all gases or odors arising therefrom. * * * Shall maintain and operate their plant and crematory or crematories, or other apparatus, and the matter and substances received, so as to prevent any obnoxious smells or gases being emitted either from the deposits of such matter or substances on their premises or from the process of cremation or
763 other treatment thereof, or from the residuum remaining after cremation or treatment as aforesaid; also, that in the operation of said works no smoke or soot shall be emitted so as to constitute a nuisance."

Section 8 provides that, "The said grantees, their associates and assigns, shall at all times be subject to and conform to all health and sanitary regulations and requirements enacted and in force during the existence of this franchise. * * * Shall receive no compensation whatever from the city and county for any service performed under the conditions of this order in disposing of the material and substances specified in this order."

Section 9, "This franchise shall cease and determine upon the failure of the grantees, their associates and assigns, to fully carry out and faithfully perform the obligations herein imposed," unless from unavoidable causes or accidents therein mentioned. Is this section self-executing?

It is well settled that a party to whom a franchise or privilege has been granted upon conditions to be performed by him, must substantially perform them, or he will forfeit the franchise; and, in a proper proceeding for that purpose, a forfeiture of his rights will be declared, and he will be ousted of the privilege granted to him. But as a general rule advantage can only be taken of such forfeiture in proceedings instituted on behalf of the granting authorities, State or municipal, as the case may be. Individuals cannot avail themselves of it in collateral suits until it is judicially determined.

In Utah N. & C. R. Co. *vs.* Utah & Co. Ry. Co., 110 Feb.
764 879, 889, the court said: "It is argued by defendants that, because of the failure on behalf of this corporation to do the acts therein required within the time therein specified, its rights become *ipso facto* void; that by the terms of the statute the forfeiture

clause was self-operative, and became of full force by the lapse of the time mentioned, and that no steps or proceedings on the part of the sovereign power to make it complete or effective were at all essential. There are numerous cases where, upon the particular facts thereof, it has been held that, a statute creating a corporation which declares that unless the corporation performs certain acts within the prescribed time its corporate existence and powers shall cease, or its powers and franchises shall terminate, such statute executes itself. But the fact is that this question is always made dependent upon the special facts, the character of the corporation, and the legal construction to be given to the particular statute. The general rule is that the question whether a railroad corporation authorized by the State has forfeited its corporate rights and franchises cannot be raised in any collateral proceeding, and can only be taken advantage of by the sovereign power which created the corporation, because it is its privilege alone to question the right of the corporation to act under its franchise. The State may waive the conditions, or enforce them, if it seems fit to do so." And cited the following authorities in support of the views therein expressed: Schulenberg *vs.* Harriman, 21 Wall. 44, 62, 22 L. Ed. 551; Van Wyck *vs.* Knevals,
765 106 U. S. 360, 368, 1 Sup. Ct. 336, 27 L. Ed. 201; Railroad Co. *vs.* McGee, 115 U. S. 469, 473, 6 Sup. Ct. 123, 29 L. Ed. 445, and authorities there cited; Bybee *vs.* Railroad Co., 139 U. S. 663, 674, 11 Sup. Ct. 641, 35 L. Ed. 305, and authorities there cited; Railroad Co. *vs.* Mingus, 165 U. S. 413, 431, 17 Sup. Ct. 348, 41 L. Ed. 770; U. S. *vs.* Northern Pac. R. Co., 177 U. S. 435, 20 Sup. Ct. 706, 44 L. Ed. 836.

In Bybee *vs.* Railroad Co., *supra*, the court, after drawing the distinction existing between certain of the New York and California cases, holding the forfeiture clauses to be self-executing, referred to the fact that the doctrine of these cases had not been universally accepted, and that under the facts there stated the principles therein announced have been repudiated in several States of the Union, and said: "It is not, indeed, always easy to determine whether a condition be precedent or subsequent. It must depend wholly upon the intention of the parties as expressed in the instrument and the facts surrounding its execution. If the condition does not necessarily precede the vesting of the estate, or if, from the nature of the act to be performed and the time required for its performance, it is evident that the intention of the parties is that the estate shall vest, and the grantee shall perform the act after taking possession, then the condition is treated as subsequent, and there is no forfeiture without a re-entry by the grantor, or in the case of the State, without some action on its part manifesting an intentionto resume its title."

The California decisions cited by appellant, wherein it is held that certain clauses in the grant or privilege, there under con-
766 sideration, have been held self-executing, viz.: Borland *vs.* Lewis, 43 Cal. 569; Oakland R. Co. *vs.* Oakland, 45 Cal. 365;

Upham *vs.* Hosking, 62 Cal. 250; Town of Arcata *vs.* Arcata Ry. Co., 92 Cal. 639, are certainly not conclusive or of binding force upon this subject, and it would therefore serve no useful purpose to review them. They are not uniform and have been criticised in the later decisions.

In Santa Rosa City R. Co. *vs.* Central Ry. Co., 38 Pac. 986, 990, the court, in referring to the decisions cited by appellant said, they "are not altogether consistent with each other, nor in harmony with the decisions elsewhere." A majority of the justices favored the views we have expressed, and referred to numerous authorities in the State courts in support thereof. Two justices dissented therefrom, a rehearing was granted, and the justices were evenly divided, and the court declared that it was impossible "to arrive at a conclusion upon the merits of the case."

Santa Rosa *vs.* Cent. Ry. Co., 112 Cal. 436.

We have, therefore, been compelled to look elsewhere for the true rule that should govern the interpretation of the forfeiture clauses contained in order No. 2965. It is questionable, to say the least, whether the evidence given in this case upon this subject would in any event sustain a forfeiture, even in a direct proceeding instituted by the city for that purpose. There was no excess of the rate charged—twenty cents per cubic yard—authorized by the provisions of the order. The questions presented relate solely to the differences of opinion between appellee and the scavengers as to
767 how the garbage should be measured, whether appellee is entitled to measure the refuse matter in bulk in its natural condition, without being compressed by artificial means. Whatever differences of opinion may be found in the decisions concerning the general rule as to forfeitures, it is manifest that the arguments based upon the alleged overcharge cannot be sustained. Such a controversy as is here presented cannot be urged as a ground of forfeiture in this suit.

Upon the other ground, that appellee is maintaining a nuisance there is, also, a decided difference of opinion between the witnesses as to whether or not the crematory of appellee had been so managed or operated "as to prevent any obnoxious smells or gases," or whether in the operation of said works any smoke or soot had been emitted therefrom so as to constitute a nuisance. Surely, there is nothing in the facts of this case, nor in any well settled principle of law applicable to such facts, that will authorize this court to determine these questions in a collateral proceeding.

It is contended that the right and privilege claimed by appellee does not prohibit the removal of house refuse and garbage beyond the territorial limits of the municipality; that the only privilege granted is that all house refuse and garbage disposed of within the city should be delivered to the crematory. This position cannot be maintained. In order to ascertain the true intent and meaning of the board of supervisors in passing order No. 2965, all of the sec-

tions must be considered together as a whole, and the object
768 and purposes of passing the order must also be considered.

A broad and liberal construction should always be given to acts and ordinances of this character in order to carry out their provisions and give effect to the intention of the parties and to secure and make effective the object to be accomplished thereby. The language used in the order, interpreted in the light of these considerations, is not susceptible of the narrow and technical construction sought to be placed upon it by appellants. We have not deemed it necessary to quote the entire order; it has already been sufficiently referred to. Its preamble declares the necessity, and gives reasons why the sole right and privilege to cremate garbage, etc., should be given. Section 1 confers upon Sharon and his assigns the sole and exclusive right and privilege to cremate and destroy "within the city" the refuse therein named, and to charge and collect the amount named therefor at the crematory or reduction plant. The words "within the city and county" as used in the order, have reference to the right to build the crematory within the city and county, and cannot fairly be construed as reserving the right and privilege to others to remove and dispose of the garbage "without the city and county." The order of the board should, like the provisions of a statute, receive a sensible construction, and should not be interpreted so as to lead to an absurdity. The reason of the law in such cases should prevail over its strict letter. (Tsoi Sim *v.* United States, 116 Fed. 920, 926, and authorities there cited.)

How could the order which gives "the sole right and
769 privilege" to cremate all the garbage, etc., within the city, be construed as allowing rival parties to destroy the privilege thus granted by gathering the garbage and transporting it without the city? Can it sensibly be said that such was the intention of the board in passing the order?

In the light of the conclusions reached upon this point, it becomes unnecessary to discuss the provisions of order No. 12, which more clearly expresses the intention of the board upon this subject.

The decree of the circuit court is affirmed.

(Endorsed:) No. 901. In the circuit court of appeals for the ninth circuit. California Reduction Company *et al.*, appellants, *vs.* Sanitary Reduction Works of San Francisco, appellee. Opinion. Filed October 5th, 1903. F. D. Monckton, clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

THE CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee.
} No. 901.

Decree.

Appeal from the Circuit Court of the United States for the Northern District of California.

This cause came on to be heard on the transcript of the
770 record from the circuit court of the United States for the northern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, with costs.

(Endorsed:) Decree. Filed and entered Oct. 5, 1903. F. D. Monckton, clerk.

At a stated term, to wit, the October term A. D. 1903, of the United States circuit court of appeals for the ninth circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the ninth day of November, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable William M. Morrow, circuit judge.

THE CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee.
} No. 901.

Order Denying Petition for Rehearing, etc.

Ordered, petition for a rehearing, heretofore filed herein, denied, and issuance of mandate stayed to and including Monday, the 16th inst.

771 In the United States Circuit Court of Appeals, Ninth Circuit *Circuit*.

CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee. } No. 901.

Stipulation Staying Mandate.

It is hereby stipulated that the issuance of the mandate in the above-entitled action may be stayed fifteen (15) days from this date.

Dated San Francisco, March 26, 1904.

WM. M. PIERSON,
Per G.,
Attorney for Appellee.

(Endorsed:) No. 901. In the United States circuit court of appeals for the ninth circuit. California Reduction Company *et al*, appellants, *vs.* Sanitary Reduction Works of San Francisco, appellee. Stipulation staying issue of mandate fifteen days from date. Filed March 26, 1904. F. D. Monckton, clerk.

772 United States Circuit Court of Appeals for the Ninth Circuit.

THE CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee. } No. 901.

Certificate of Clerk C. C. A. to Transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing seven hundred and seventy-one (771) pages, numbered from one (1) to seven hundred and seventy-one (771), inclusive, comprised in the preceding three (3) volumes, numbered, respectively, volume I, II, III, to be a true copy of the printed record and of all proceedings had in the above-entitled case in the said the United States circuit court of appeals for the ninth circuit as the same remain of record in my office.

Attest my hand and the seal of the said the United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 29th day of March, A. D. 1904.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, Clerk.

773 UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

Being informed that there is now pending before you a suit in which The California Reduction Company *et al.*, are appellants, and The Sanitary Reduction Works of San Francisco is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you
774 that you send without delay to the said supreme court, as aforesaid, the record and proceedings in said cause, so that the said supreme court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the second day of June, in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

775 [Endorsed:] File No. 19,350. Supreme Court of the United States. No. 699, October term, 1903. The California Reduction Co., *et al.*, *vs.* The Sanitary Reduction Works of San Francisco. No. 901. United States circuit court of appeals for the ninth circuit Writ of certiorari. Filed Jun- 7 1904 Frank D. Monckton, clerk, By Meredith Sawyer deputy clerk.

776 In the United States Circuit Court of Appeals for the Ninth Circuit.

CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee. } No. 901.

Stipulation that Record Filed in Supreme Court Be Taken as Return to Writ of Certiorari.

Whereas the appellants above named heretofore filed in the Supreme Court of the United States their petition for a writ of certiorari requiring the above entitled court to certify to the said Su-

preme Court for its review and determination the above entitled cause;

And whereas, together with said petition, said appellants filed in said Supreme Court a certified transcript of the record of the said cause and the proceedings had therein in the said circuit court of appeals and in the circuit court of the United States for the ninth circuit, northern district of California;

And whereas upon said petition a writ of certiorari, according to the prayer of said petition, issued out of and under the seal of said Supreme Court to the judges of said court of appeals on the second day of June, 1904;

777 Now therefore be it, and it is hereby, stipulated by and between counsel for the respective parties hereto that the said transcript may be taken as and for the return of said writ.

Dated this 9th day of June, 1904.

CHARLES PAGE,
E. J. McCUTCHEN,
R. T. HARDING,
GARRET W. McENERNEY,
L. F. Y., Attorneys for Appellants.
C. L. TILDEN,
Attorney for Appellee.

778 [Endorsed:] No. 901. In the United States circuit court of appeals ninth circuit northern district of California. California Reduction Company *et al.*, appellants, *vs.* Sanitary Reduction Works of San Francisco, appellee. Stipulation that record filed in the Supreme Court be taken as return to writ of certiorari. Page, McCutcheon & Knight, R. T. Harding, Garret W. McEnerney, counsel for appellants. Filed Jun- 9 1904 Frank D. Monckton, clerk. By Meredith Sawyer, deputy clerk.

779 United States Circuit Court of Appeals for the Ninth Circuit.

CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee. } No. 901.

Certificate of Clerk C. C. A. to Stipulation.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the next preceding page to be a "Stipulation that record filed in the Supreme Court be taken as return to writ of certiorari" filed this day in the above entitled cause, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the said the United States circuit court of appeals for the ninth circuit, at San Francisco, California, this ninth day of June, A. D., 1904.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, Clerk,
By MEREDITH SAWYER,
Deputy Clerk.

780 United States Circuit Court of Appeals for the Ninth Circuit.

CALIFORNIA REDUCTION COMPANY ET AL., Appellants,
vs.
SANITARY REDUCTION WORKS OF SAN FRANCISCO, Appellee. } No. 901.

Return to Writ of Certiorari.

By direction of the honorable the judges of the United States circuit court of appeals for the ninth circuit, I, Frank D. Monckton, clerk, in obedience to the annexed writ of certiorari issued out of the honorable the Supreme Court of the United States and addressed to the honorable the judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the above entitled cause, do attach to the said writ a certified copy of a stipulation entered into between counsel for the respective parties to the said cause on the 9th day of June, A. D. 1904, the original of which stipulation is of record in my office, and do hereby certify the same as due return to the said writ.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said the United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 9th day of June, A. D. 1904.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, Clerk,
By MEREDITH SAWYER,
Deputy Clerk.

[Endosed:] File No. 19350. Supreme Court U. S. October term, 1904. Term No. 255. The California Reduction Co. *et al.*, petitioners, *vs.* The Sanitary Reduction Works of San Francisco. Writ of certiorari and return. Filed June 29, 1904.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. _____.

THE CALIFORNIA REDUCTION COMPANY ET AL.,
PETITIONERS,

vs.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, RESPONDENT.

PETITION TO SUPREME COURT UNDER THE ACT OF CONGRESS OF MARCH 3, 1891, FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Supreme Court of the United States:

Your petitioners, The California Reduction Company (a corporation), S. Antonio, D. Arkillo, A. Bacigalupi, A. Bacigalupo, F. Bargoglotti, D. Bargoglotti, C. Besazzi, J. Binsotti, F. Bioselli, A. Brandi, A. Brassi, D. Calomarlair, A. Caporotto, C. A. Carlson, C. B. Carcona, D. Gemenagla, G.

Cereghino, V. Chiossi, L. Chivighino, F. Compe, L. Consigla, P. Constante, G. Costa, M. Counesita, Mrs. Jenny Cozza, L. Cumisco, M. Cuneo, P. De Luci, D. De Martini, J. Devencinzi, P. Devencinzi, A. Dondera, E. Erigero, D. Esposto, M. Fidmo, A. Figoni, L. Firpo, M. Foppiano, D. Freusse, D. Frienzi, J. Garbino, S. Gardelli, V. Gattle, G. Gerolamo, M. Giovanni, F. Gusto, F. Jicento, F. Lanteri, G. Lercari, P. Lugi, V. Manliano, G. B. Molinan, E. Motini, P. Mornillo, A. C. Mosoni, D. Mozio, C. Muzio, J. Muzio, M. Nava, John Moce, J. Paganini, B. Pasqualetti, F. Picollo, C. Pietranove, A. Podesti, F. Ratto, G. B. Ratto, L. Ratto, A. Remote, F. Rocco, J. Rossi, G. Runcallo, P. Rustici, P. Segale, G. Semonza, G. Siminetti, D. Scrivani, R. Stefano, A. Tisconia, M. Tripo, G. Tuierolo, G. P. Turri, Giuseppe Arata, sued herein as First Italian; Luigi Brassetto, sued herein as Second Italian; Giovanni Caniecia, sued herein as Third Italian; Giuseppe Gensigliere, sued herein as Fourth Italian; Antonio Campi, sued herein as Fifth Italian; Antonio Cuneo, sued herein as Sixth Italian; Giovanni Cagenzio, sued herein as Seventh Italian; Luigi Cararo, sued herein as Eighth Italian; Luigi Cereghino, sued herein as Ninth Italian; Vincinzo Chiossi, sued herein as Tenth Italian; Antonio Camicia, sued herein as Eleventh Italian; Giovanni Cesta, sued herein as Twelfth Italian; Ginglio Demartini, sued herein as Thirteenth Italian; Paolo Demartini, sued herein as Fourteenth Italian; Angelo Devincenzi, sued herein as Fifteenth Italian; Antonio Delucchi, sued herein as Sixteenth Italian; Bartolomeo Devincenzi, sued herein as Seventeenth Italian; Antonio Dendero, sued herein as Eighteenth Italian; Emiglio Devincenzi, sued herein as Nineteenth Italian; Domenico Delucchi, sued herein as Twentieth Italian; G. B. Espesto, sued herein as Twenty-first Italian; Luigi Figeni, sued herein as Twenty-second Italian; Abramo Ferretti, sued herein as Twenty-third Italian; G. B. Feppiano, sued herein as Twenty-fourth Italian; Angelo Ferrarri, sued herein as Twenty-fifth

Italian; Giovanni Figeni, sued herein as Twenty-sixth Italian; Luigi Figeni, sued herein as Twenty-seventh Italian; Francesco Fraviga, sued herein as Twenty-eighth Italian; Giovanni Firenze, sued herein as Twenty-ninth Italian; Antonio Luchitti, sued herein as Thirtieth Italian; Pietro Leonardino, sued herein as Thirty-first Italian; Giovanni Melinari, sued herein as Thirty-second Italian; Eluro Marini, sued herein as Thirty-third Italian; Firpo Michele, sued herein as Thirty-fourth Italian; Viterrio Muzio, sued herein as Thirty-fifth Italian; Giacome Muzio, sued herein as Thirty-sixth Italian; G. B. Mondani, sued herein as Thirty-seventh Italian; Luigi Muzio, sued herein as Thirty-eighth Italian; Agostine Muzio, sued herein as Thirty-ninth Italian; Pietro Mesanta, sued herein as Fortieth Italian; Michele Nave, sued herein as Forty-first Italian; Domenico Picetti, sued herein as Forty-second Italian; Domenico Paganini, sued herein as Forty-third Italian; Luigi Peggi, sued herein as Forty-fourth Italian; Andrea Pedesta, sued herein as Forty-fifth Italian; Giovanni Pisigeni, sued herein as Forty-sixth Italian; Giuseppe Quieretto, sued herein as Forty-seventh Italian; Luigi Rappo, sued herein as Forty-eighth Italian; Francesco Ratto, sued herein as Forty-ninth Italian, and Antonio Tescioma, sued herein as Fiftieth Italian, respectfully present to this court this their petition for a writ of *certiorari*, addressed to the United States circuit court of appeals for the ninth circuit, commanding said court and the clerk thereof to certify to the United States Supreme Court the record and proceedings in the case in said United States circuit court of appeals for the ninth circuit, wherein the petitioners above named are the appellants, and the respondent, said The Sanitary Reduction Works of San Francisco, is the appellee, together with its opinion therein, for the review and determination of said case by the Supreme Court of the United States, as provided in section 6 of the act of Congress approved March 3, 1891.

The brief accompanying this petition sets forth the reasons and grounds upon which this writ of certiorari is applied for, and therefore they are not repeated in this petition.

CHARLES PAGE,
E. J. McCUTCHEN,
GARRET W. McENERNEY,
Attorneys for Petitioners.

GARRET W. McENERNEY,
Of Counsel.

FILE COPY.

Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 699

THE CALIFORNIA REDUCTION COMPANY ET AL.,
PETITIONERS,

vs.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, RESPONDENT.

BRIEF ON BEHALF OF PETITIONERS IN SUPPORT OF APPLICATION TO THIS COURT FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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CHARLES PAGE,
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Attorneys for Petitioners.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10798

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BRIEF ON BEHALF OF PETITIONERS IN SUPPORT OF APPLICATION TO THIS COURT FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

STATEMENT OF THE CASE AND ARGUMENT.

This suit was commenced to enforce an ordinance of the city and county of San Francisco—the existence and validity of the ordinance being called into question—whereby there was granted to the assignor of complainant the *exclusive* privilege to receive and reduce by incineration, *for a period of fifty years*, all house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones, other

like matter, dead animals, putrid vegetable matter, and fish, flesh, or food condemned by the board of health as unfit for human food, found within the city and county of San Francisco.

By the terms of the ordinance (Record, p. 9) all the substances named are required to "be forthwith delivered to the crematory herein provided for, and there, at the expense of the person or corporation so conveying the same, be cremated or destroyed," etc. (Record, foot of page 12).

The price required to be paid for the cremation or destruction of the substances named is twenty cents per cubic yard (Record, p. 11).

The circuit court for the northern district of California obtained jurisdiction by reason of diversity of citizenship. The complainant was a California corporation. The California Reduction Company was a Colorado corporation, organized for the purpose of removing from San Francisco, by boats and barges, house refuse and garbage for destruction beyond the municipal limits. The other defendants, about 140 in number, are subjects of the King of Italy, and pursue the occupation of scavengers in San Francisco, "*and about half a dozen of them are shown to be householders in the city of San Francisco*" (Record, p. 737).

In its opinion upon an application for an injunction *pendente lite*, the circuit court upheld the ordinance in question, under an act of the legislature of California (Stats. Cal. 1893, p. 288) regulating the sale of franchises.

This act read as follows:

> "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises (approved March 23, 1893).
>
> "The people of the State of California, represented in senate and assembly, do enact as follows:
>
> "SECTION 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or

operate railroads along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by the board of supervisors, common council, or other governing or legislative body of any county, city and county, city, town or district within this State, shall be granted upon the conditions in this act provided, and not otherwise. The fact that an application for such franchise or privilege has been made to such board of supervisors, common council, or other governing or legislative body, together with a statement that it is proposed to grant the same, must first be advertised in one or more daily newspapers of the county, city and county, city, town or district wherein the said franchise or privilege is to be exercised. Such advertisement must continue every day for at least ten days, and must commence at least thirty days before any further action of the board of supervisors, common council, or other governing or legislative body. The advertisement must state the character of the franchise or privilege proposed to be granted, the terms of its continuance, and, if a street railroad, the route to be traversed, and the day on which tenders will be received for the same. On the day so stated, the board, or other governing or legislative body herein mentioned, must meet in open session and read the tenders. The franchise or privileges must then be awarded to the highest bidder: *Provided, however*, That nothing in this section shall affect a special privilege granted for a shorter term than two years.

"SECTION 2. Any member of any board of supervisors, common council, or other governing or legislative body of any county, city and county, city, town or district of this State, who, by his vote, violates or attempts to violate the provisions of this act or any of them, shall be guilty of a misdemeanor and of malfeasance in office and be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction.

"SECTION 3. This act shall take effect immediately."

Subsequent to the granting of the preliminary injunction, issue was joined and the case tried. Judgment passed for the complainants, and thereupon the respondents (petitioners here) prosecuted an appeal to the circuit court of appeals for the ninth circuit.

The petitioners here claimed in the circuit court of appeals that the ordinance was in no sense a franchise, but a mere monopoly of a hitherto common right, and if sustained at all, could only be sustained as a contract or a grant of monopoly under the police power.

In support of their position, that the ordinance in question was in no sense a franchise, the petitioners cited Bank of Augusta *vs.* Earle, 13 Peters, 595; People's Railroad *vs.* Memphis Railroad, 10 Wall., 51; California *vs.* Pacific Railroad Co., 127 U. S., 40.

They furthermore cited State *vs.* Green, 112 Ind., 462; 14 N. E., 352, in which it was decided that a physician's license is in no sense a franchise, although criminal for any person to exercise the calling of a physician without a license, and People *vs.* Matthews, 53 Ill. App., 305, wherein it was decided that the right to license the traffic in intoxicating liquors is found in the police power of the State, and that a license granted thereunder does not come within any definition of a franchise.

The circuit court of appeals did not uphold the ordinance as a franchise, but upheld it as a contract under the police power, leaving open, however, the question whether it could not also be upheld or maintained as a franchise.

The court said (Record, p. 757):

> "Inasmuch as we have arrived at the conclusion that the rights and privileges conferred by the board were constitutional and valid in the proper exercise of the police power of the State, and could be sustained as a contract, it seems t us unnecessary to further discuss the question whether it could also be upheld and maintained as a franchise."

In support of our application for a writ of certiorari, we rely upon the following propositions:

I. Considered either as a franchise or a contract under the police power, the ordinance here involved is a violation of the fourteenth amendment, for the reason that for a period of fifty years it deprives the householders of San Francisco of property of commercial value by transferring that property to the respondent, and this without requiring compensation to be made.

II. Conceding the ordinance here involved to be in all other respects constitutional and valid, it is nevertheless invalid for the reason that there is no authority of law whatever to sustain the provision therein contained which requires the householders of San Francisco to pay twenty cents per cubic yard for the reduction of the substances taken from them and given to the respondent by the ordinance here involved.

III. Considered either as a contract under the police power or as a franchise, the ordinance here involved never had any legal existence for the reason that it was never lawfully enacted.

IV. Considered as a franchise, the ordinance is invalid for want of power to grant the franchise and for a violation of the prescribed mode in the granting thereof, if there were power to grant the same.

V. Socialism has not become so dominant a principle in the police power that the State can assume or farm out a monopoly of all of the occupations subject to regulation under the police power.

I.

CONSIDERED EITHER AS A FRANCHISE OR A CONTRACT UNDER THE POLICE POWER, THE ORDINANCE HERE INVOLVED IS A VIOLATION OF THE FOURTEENTH AMENDMENT, FOR THE REASON THAT FOR A PERIOD OF FIFTY YEARS IT DEPRIVES THE HOUSEHOLDERS OF SAN FRANCISCO OF PROPERTY OF COMMERCIAL VALUE BY TRANSFERRING THAT PROPERTY TO THE RESPONDENT, AND THIS WITHOUT REQUIRING COMPENSATION TO BE MADE.

In the circuit court of appeals we claimed (Record, p. 742, pt. 13) that the ordinance here involved was "invalid because it deprives the owner thereof of property of commercial value without any necessity and without compensation."

This point is stated by the court as one of the propositions upon which we relied, but the proposition is nowhere considered in the opinion of the court.

We submit that the ordinance does deprive the householders of San Francisco of property without any compensation.

The ordinance makes it obligatory upon every inhabitant of the city and county of San Francisco to forthwith deliver to the complainant, for reduction and retention by it, all house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones, other like matter, dead animals, putrid vegetable matter, and fish, flesh, and food that may be condemned by the board of hea'th as unfit for human food, and to pay twenty cents per cubic yard for the reduction of all of the enumerated substances.

There is no opportunity under this ordinance for any householder in San Francisco who may generate any of these substances, and who is, therefore, the owner of them, to make any disposition of them whatever. He is required by the ordinance to deliver them to the complainant for reduction

and retention, and he is forbidden (and among those who are so forbidden are the six petitioners who are householders in San Francisco) to convey any of these substances beyond the limits of the city and county of San Francisco.

It is therefore clear beyond discussion that for fifty years all property in the substances named is required to be surrendered by the inhabitants of San Francisco to the complainant.

Indeed, the obligation is not limited to the surrender, for by the terms of the ordinance the householder must pay twenty cents per cubic yard for the reduction of the property surrendered.

Nor can it be claimed that the articles required to be surrendered have no value whatever. It is shown in the proofs that a number of the substances mentioned are not only of value, but that they have a commercial value and are subjects of quotation in the daily fluctuating market reports, as, for instance, bones.* This is likewise true of broken crockery and tins. It is likewise true of house refuse as distinguished from garbage. It is decided in Alpers *vs.* San Francisco, 32 Fed., 506, that it is likewise true of dead animals.

Furthermore, it is expressly alleged in the bill of com-

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*The invalidity of the ordinance here in question, upon the ground that it involved the confiscation of property, was asserted by the petitioners in their answer to the bill of complaint (pages 63, 71, 102, 117, 118, 119, 120). This point is made the subject of an assignment of error by petitioners (Record, pages 687, 688, 689, 690, 692, 694, 695, 696, 697, 699, 720, 721). The following witnesses gave testimony upon the subject: Behrend Joost (pages 184, 203, 225, 226, 227, 228, 230, 231, 232, 233, 234, 248); M. D. Levenson (pages 250, 256, 257–260, 261, 264, 268); L. R. Ellert (page 213); Luigi Ferrari (page 272); D. Picetti (page 290); Frederick Minatti (page 298); Frederick Boicello (page 309); Guiglermo Varno (page 325). See also Exhibit "A," Record, page 184, and Complainant's Exhibit "D," page 528.

plaint that the substances mentioned in the ordinance "*are of value as articles of commerce.*"

The language is (Record, p. 32):

> "And your orator further shows unto your honors that *portions* of *all* of the garbage and other materials mentioned and described in said orders, ordinances and resolutions, *are of value as articles of commerce*, after being treated and reduced by your orator by processes both of reduction and incineration, which said articles of commerce when so reduced and incinerated, are and have been heretofore sold and disposed of by your orator at a profit, and in this way it has derived a revenue and is remunerated for a portion of the labor and expense incurred by it in incinerating and cremating the garbage and refuse matter, with which said articles of commerce are mixed and combined."

It will therefore be seen that it is an undisputed fact that the householders of San Francisco are required to surrender to the complainant all of the substances specified in the ordinance, *including portions thereof which are of value as articles of commerce.*

Nor is the value of this property so confiscated trifling in amount. On the contrary, the record shows that it has large value, which will obviously grow greater with the years. The complainant commenced business as a reduction company November 1, 1897. In the two months following its gross receipts amounted to $7,010.45 (Record, p. 27). This was equivalent to a gross annual income of $42,062.70. According to the testimony of the president of the complainant, the average amount of house refuse, &c., generated in San Francisco at the time he gave his testimony, which was in 1899, was 500 loads per day (Record, p. 208, Q. 24). Of this amount, according to the testimony of the president of the corporation, 250 loads per day were being diverted from the complainant (Record, p. 209, Q. 27). The diversion involved a loss of *profits* of $2,000 a month (Record, p. 209,

Q.'s 28 to 32). This testimony was given March 28, 1899 (Record, p. 178). During the year 1898 the gross receipts were $46,584.20 (Record, p. 586).

It is therefore evident that it cannot be claimed that the substances required to be delivered to the complainant are of inconsequential value and cannot be made the subject of commercial transactions or of profits in amounts which are of consequence. Under these circumstances we submit that the ordinance is a substantial violation of the fourteenth amendment.

In State *vs.* Robbins, 124 Ind., 308; 24 N. E., 978, there was involved the ordinance providing for the destruction of gaming devices. It is declared in the opinion that "unless, "therefore, the articles seized are of such a character that "the law will not recognize them as property, entitled as "such to its protection *under any circumstances*, they cannot "be summarily destroyed without affording the owner an "opportunity to be heard upon the subject of their lawful "use."

In a number of cases bearing very close analogy to the case at bar it is decided that ordinances like that here involved are unconstitutional because they involve a confiscation of property.

It is so decided in the following cases:

Meyer vs. Jones (Ky.), 49 S. W., 809 (1899).

Iler vs. Ross (Neb.), 90 N. W., 961; 57 L. R. A., 895 (1902).

River Rendering Co. vs. Behr, 77 Mo., 91; 46 Am. Rep., 8.

Knauer vs. City of Louisville, 45 S. W., 510 (Ky., 1898).

State vs. Morris, 47 La. Ann., 1684; 18 So., 710.

Underwood vs. Green, 42 N. Y., 140.

Schoen vs. The City of Atlanta, 97 Ga., 697; 25 S. E., 380.

Gregory vs. Mayor, 40 N. Y., 273.

In order that it may be made manifest that these cases decide the point to which they are cited, we have taken the following extracts from some of them:

Meyer vs. Jones:

"A city ordinance providing for the removal of carcasses of dead animals, and fixing charges therefor, is void *unless it gives the owner of a dead animal the right to remove it, or have it removed,* within a prescribed time before the public contractor takes charge thereof."

Iler vs. Ross:

"Many other substances coming within the meaning of the language of the ordinance in the nature of *debris*, rubbish, and other waste material which might be specifically mentioned, *could probably be used for some beneficial purpose*, and many others having no utility like those referred to are not within themselves nuisances and a menace to the health of the public. *It is quite true their accumulation in unreasonable quantities and for an unreasonable length of time would render them nuisances, and to prevent which all reasonable regulations may be imposed.* * * *

"*Not only is the owner's property taken from him when he could perhaps dispose of it* or make arrangements for its disposal to some advantage, *but he is compelled to bear the expense of the taking.* We cannot believe such an ordinance can be justified and upheld by the application of any sound principle of law."

In *River Rendering Co. vs. Behr*, 77 Mo., 91 (S. C., 46 Am. Rep., 6), an ordinance and franchise similar in principle to the one in the present case authorized the rendering company to remove and appropriate all carcasses of animals found in the city of St. Louis and not slain for food, *without preserving to the owner any right to first dispose of the carcass.* The principle now contended for was recognized by the court in the following language:

"The ordinance in question cannot be maintained as a police regulation. It can never be necessary to take from one man his property and give it to another, until the property is in such condition that it is, or is so used that it is likely to become a nuisance; and even in the latter case, until it has become a nuisance, *an opportunity should be given the owner to change the use, or make such disposition of his property as will prevent the apprehended danger.* * * *

"By this ordinance, as construed by the two courts which have passed upon it, the property of A, in his dead hog, or bullock, is transferred to B, without the intervention of courts or juries, and with no formality whatever, except a notice from the police department of the city, that the hog or bullock is dead, and is to be found at a given place, which may be on the owner's premises in his own possession. The ordinance does not declare that all dead animals found in the city, not killed for human food, are nuisances, and if it did, such a provision could not be upheld. A dead hog, or steer or sheep is not *per se* a nuisance. It was so ruled by the New York court of appeals in *Underwood vs. Green*, 42 N. Y., 140. It was there observed that: 'A dead hog is not *per se* a nuisance, even though it died of suffocation, and is not necessarily dangerous to public health. The owner may still put it to a useful and innocent purpose.' While a dead animal is not *per se* a nuisance, it may become so, and the city, under her charter, may pass such ordinances as are necessary to prevent it from becoming a nuisance, *but she must in such legislation pay a proper regard to the rights of the owner of such property.*

"*The death of a domestic animal does not terminate the owner's property*, and while he may be required to make such use or disposition of the carcass as will prevent a nuisance, stench or other inconvenience to the neighborhood, the municipal authorities cannot arbitrarily deprive him of his property by giving it to another."

In *Knauer vs. City of Louisville* (Kentucky), 45 S. W. Rep., 510, a public contractor was, by ordinance, given the exclu-

sive privilege of removing the carcasses of dead animals. The owner could direct the disposition of the carcass by paying the public contractor certain fees, which fees were found to be practically prohibitory. The court say:

> "The sole question in this case is whether the city can pass an ordinance which fixes the fees to be paid to the public contractor for the removal of the carcasses of dead animals out of the city at such sums that their owners cannot pay them and realize anything out of them. Can the city in this indirect way confiscate the property of its owner and give it to the public contractor? Dead animals are not *per se* nuisances, and the owner's property rights do not cease at the death of the animal. Until such becomes a nuisance, the owner should have the right to realize whatever he can from it. Under the police power, the municipality certainly has the right and it is its duty to prevent carcasses of dead animals from becoming nuisances; *and to that end it may prescribe the manner of and the time in which the owners shall remove or permit them to be removed.* The employers of the appellant can remove the carcasses as speedily and in a manner that will cause as little offense to the public sense and taste as can the contractor. They can realize considerable sums by the sale of the carcasses by being permitted to make the removal. (After quoting from authorities.) It requires no argument to show that neither a municipal or other government can take one man's property and give it to another. * * * The effect of an ordinance which does not allow the owner of a dead carcass to remove it, but requires him to pay a fee for its removal which is greater than its value, is precisely the same in effect as an ordinance which takes the carcass from one person and gives it to another."

In *State vs. Morris*, 47 La. Ann., 1664, the court, passing upon a similar ordinance, say:

> "We rest the case entirely on the ground that the owner is entitled to a reasonable time after the death of an animal to dispose of it or cart it away under the

requirements of existing ordinances. The situation and the climate may render it necessary to permit very little time and opportunity for removal. In adopting ordinances which must necessarily be general the owner may be allowed but little time (if public safety requires) for the removal of his dead animals. The authorities agree that the removal must be made as ordained, and that the courts cannot contest the manner in which it shall be done and under what sanitary condition, if reasonable. *However limited may be the right of removal it cannot be denied entirely without conflicting with the laws regulating police power.*"

Upon the foregoing authorities we submit that the ordinance here involved does violate the constitutional provision which declares that property shall not be taken without compensation.

II.

CONCEDING THE ORDINANCE HERE INVOLVED TO BE IN ALL OTHER RESPECTS CONSTITUTIONAL AND VALID, IT IS NEVERTHELESS INVALID FOR THE REASON THAT THERE IS NO AUTHORITY OF LAW WHATEVER TO SUSTAIN THE PROVISION THEREIN CONTAINED WHICH REQUIRES THE HOUSEHOLDERS OF SAN FRANCISCO TO PAY TWENTY CENTS PER CUBIC YARD FOR THE REDUCTION OF THE SUBSTANCES TAKEN FROM THEM AND GIVEN TO THE RESPONDENT BY THE ORDINANCE HERE INVOLVED.

In the circuit court of appeals we argued (Record, p. 742, pt. 7) "that there is no authority of law for the imposition of the compulsory payment of twenty cents a cubic yard upon the householders of the city and county of San Francisco."

Although it is stated in the opinion of the circuit court of appeals that this point is made by us, the proposition is nowhere considered by it.

There is no law upon this subject peculiar to California. In other words, there is no law in the State of California which in terms or by necessary or other implication authorized any municipal corporation to impose such a burden as that involved in the charge of twenty cents a cubic yard for the reduction of the substances mentioned. It is true that constitutional and statutory provisions exist in California, whereby there is conferred upon the municipalities of that State the usual powers of local police. If such powers of local police, which have been granted to nearly all of the municipalities of the country, carry by necessary implication power to impose a charge like that here involved, then such power exists; otherwise the power is entirely wanting.

As already stated, there is no legislation in California directly covering the matter here involved, and if it exists at all it must arise out of the power granted in general terms to legislate with respect to matters of local police. In that event such power has been conferred upon and inheres in practically every municipal corporation in the country.

We submit that no such power exists as an incident to the grant of the powers of ordinary local police, and that therefore there is no law in California which authorized or authorizes such a provision.

The Slaughter-house case is not authority for the imposition of the charge. The law-making power in that case was the sovereign law-making authority of the State of Louisiana, while here we have a mere municipal corporation, which has only such authority as is delegated to it by a sovereign law-making power.

There is not a single reported case which sustains the exercise by municipal authorities of such a power. There was one case cited to the point in the courts below, namely, Walker *vs.* Jamieson, 140 Ind., 591; 37 N. E., 402; 39 N. E., 869; 28 L. R. A., 679. In that case, however, in answer to a petition for a rehearing, the portion of the decision which affirmed a provision imposing a charge somewhat similar to that here involved *was expressly withdrawn.*

III.

CONSIDERED EITHER AS A CONTRACT UNDER THE POLICE POWER OR AS A FRANCHISE, THE ORDINANCE HERE INVOLVED NEVER HAD ANY LEGAL EXISTENCE FOR THE REASON THAT IT WAS NEVER LAWFULLY ENACTED.

The ordinance here involved was attacked upon the ground that it had never been passed, for the reason that it had never received the signature of the mayor of San Francisco.

The circuit court decided that the ordinance did not require the signature of the mayor for the reason that it was the grant of a franchise under the franchise act of 1893 (Stats. Cal. 1893, p. 288).

The circuit court of appeals, as already shown, put its decision upon the ground that the ordinance was a contract under the police power, and did not undertake to decide whether it was a franchise or not.

The circuit court of appeals, however, decided that the ordinance did not require the signature of the mayor, for reasons presently to be mentioned.

We now proceed to show briefly that, whether it be a contract under the police power or a franchise under the act of 1893, the ordinance failed of passage for the reason that it never received the signature of the mayor.

(a.) *Considered as a contract under the police power, the ordinance required the signature of the mayor.*

The charter of San Francisco, at the date of the passage of the ordinance here involved, provided that "every ordinance or resolution of the board of supervisors" covering the subjects of legislation, among others, which are embraced in the ordinance here involved should be passed,

then published for five days, then again passed, and receive the approval of the mayor or be passed notwithstanding his disapproval. (See Consolidation Act of the city and county of San Francisco, Stats. Cal. 1856, p. 164, sec. 68.)

This course was not followed in the passage of the ordinance here involved. The ordinance was passed to be printed, showing that the board of supervisors had in mind the necessity of passing the ordinance, printing it, passing it the second time, and then having it approved by the mayor. Indeed, the ordinance expressly provides that the grantees of the privilege conferred by the ordinance "shall within a period of ten days from the date of the *approval* of this order file with the clerk of this board their acceptance of its provisions and of this franchise" (Record, p. 15, sec. 11.)

It will be therefore seen that the board contemplated that the ordinance would ultimately be submitted to the mayor for his approval. In point of fact it never was so submitted, and it is the established law in California that under such circumstances the ordinance has no legal existence.

Eisenhuth *vs.* Ackerson, 105 Cal., 87.
Creighton *vs.* Manson, 27 Cal., 614, 630.
Spring Valley W. W. *vs.* Ashburn, 52 Cal., 62.
Pollock *vs.* San Diego, 118 Cal., 593.

This point was decided against us by the circuit court of appeals in the following language (Record, p. 758):

> "Order No. 2965 is claimed to be invalid because it was not signed by the mayor *as required by the act of* 1893, and in this connection it is claimed that the words found in the statutes of California 'by regulation or order' are synonymous with the words elsewhere used 'ordinance and resolution.' Admitting that these words may often be used to express the same meaning, it does not necessarily follow that in all cases the word 'order' is synonymous with 'ordinance,' or that the word 'resolution' is synonymous

with 'regulation.' It is enough to say that by section 1 of the act of 1863 the municipality was authorized to proceed under the police power 'by order and regulation' to do the things mentioned in order No. 2965, and Order No. 12 (second series).

"In People *vs.* Counts, 89 Cal., 15, 22, it was claimed that the board should have proceeded by ordinance and not by order. The court said: 'Conceding that the county government act for some purposes requires an ordinance, whilst for other purposes only an order is required, it is only necessary in answer to this objection, to say that for the purpose under consideration section 37 of the act requires the board to do what it is thereby required to do "by order."'"

[The circuit court of appeals was in error in saying that we had claimed that the mayor's signature was made necessary by the act of 1893. Our claim was that it was made necessary by section 68 of the charter of San Francisco, commonly called the Consolidation Act.]

The circuit court of appeals decides that the police powers of the city and county of San Francisco can be exercised by order or regulation, and that hence the provision that every ordinance and every resolution must receive the signature of the mayor does not apply to the exercise of the police power for the reason that such powers may be exercised by order or regulation. In the city and county of San Francisco during a period of forty-three years the word "regulation" and the word "order," used in the consolidation act quoted by the circuit court of appeals, have been universally understood to mean "ordinance." In that time there were no ordinances (so called) passed by the common council of that municipality, but there were adopted during that time 3,396 orders and 50,953 resolutions.

But we do not depend for our position upon this local interpretation of the terms of a local act. We claim and insist that the provision of the consolidation act which requires every ordinance and every resolution upon enumer-

ated subjects to receive the signature of the mayor is so comprehensive as to include every legislative act of which a municipal body is capable. It is established by an overwhelming array of authority that a municipal body cannot act in a legislative way except through the medium of an ordinance or a resolution. The terms "ordinance" and "resolution" have been repeatedly decided to include every species of legislative action of which a municipal corporation is capable.

The following cases decide that a municipal body cannot act in a legislative way except through the medium of an ordinance or a resolution. The terms "ordinance" and "resolution" therefore include both regulation and order.

Dey *vs.* The Mayor, &c., 19 N. J. E., 412, 416.

Moser *vs.* White, 29 Mich., 59, 60.

People of Alton *vs.* Mulledy, 21 Ill., 76, 78.

People *vs.* Schroder, 76 N. Y., 160, 162.

State *vs.* The City Council, 37 Atl., 675, 676.

Erwin *vs.* Jersey City, 37 Atl. (N. J.), 732, 734.

Schuman *vs.* Seymour, 24 N. J. Eq., 143, 153.

State *vs.* Darrow, 67 N. W. (Minn.), 1012, 1014.

Elliott's Elements of Municipal Corporations, p. 176.

Pollock *vs.* San Diego, 118 Cal., 593, 595.

McGavock *vs.* City of Omaha, 58 N. W. (Neb.), 543, 549.

Sower *vs.* Philadelphia, 35 Pa., 231, 236.

City of Crawfordsville *vs.* Braden, 130 Ind., 149; 30 Am. St. Rep., 214, 224.

Creighton *vs.* Manson, 27 Cal., 614, 629.

Chicago, &c., R. R. Co., *vs.* Chicago, 51 N. E. (Ill.), 596, 598.

City of Alma *vs.* Guaranty Savings Bank, 60 Fed., 203, 206.

(b.) Considered as a franchise granted under the act of March 23, 1893 (Stats. Cal. 1893, page 238), the ordinance required the signature of the mayor.

In its opinion upon the motion for a preliminary injunction, the circuit court (Record, pp. 169 to 171) decided that the provision requiring the signature of the mayor did not apply to the franchises granted under the act of 1893. This decision was based upon the authority of People *vs.* Board of Supervisors, 122 Cal., 421, wherein it was decided that a franchise for a wharf should have been granted in conformity to the act of 1893. The case cited, however, has no application to the point here involved. The purpose of the act of 1893 was to simply require all franchises to be sold, and was intended to prohibit their transfer upon gratuity. The very case cited by the circuit court, People *vs.* Board of Supervisors, 122 Cal., 421, 423, declares that "it has been decided by this court that the grant of a franchise was a legislative act." The franchise act of 1893 provides that "every franchise or privilege * * * proposed to be granted by the board of supervisors, common council or other governing or legislative body * * * shall be granted upon the condition in this act provided and not otherwise." Provision is thereupon made requiring the fact to be stated "that an application for such franchise or privilege has been made," and "that it is proposed to grant the same." Thereupon procedure is provided for the opening of bids and the striking off of the franchise to the highest bidder. The point in the procedure where the legislative power of the common council is called into play is when the common council determines to grant a franchise and give notice of the proposed sale. This it must do before the publication occurs, for the publication is required to state "the fact that an application for such franchise or privilege has been made" and that "it is proposed to grant the same."

It is obvious, therefore, that the board is required to deter-

mine that it will grant the franchise to the highest bidder. This action is required by the charter of San Francisco to be submitted to the mayor for his approval or rejection. There is, therefore, no theory upon which it can be decided that the act of 1893, which was intended simply for the purpose of securing the sale of franchises, had the effect of repealing a provision of the municipal charter (that requiring the signature of the mayor) which was intended to safeguard the interests of the municipality and the inhabitants thereof.

The only decision in the courts of California which we think is directly in point is one holding that an ordinance granting a railroad franchise which did not receive the signature of the mayor was never lawfully enacted. (See Eisenhuth *vs.* Ackerson, 105 Cal., 87.)

We therefore submit that, considered as the grant of a franchise, the ordinance here involved was never legally enacted, for the reason that it never received the signature of the mayor.

IV.

CONSIDERED AS A FRANCHISE, THE ORDINANCE IS INVALID FOR WANT OF POWER TO GRANT THE FRANCHISE AND FOR A VIOLATION OF THE PRESCRIBED MODE IN THE GRANTING THEREOF, IF THERE WERE POWER TO GRANT THE SAME.

(*a.*) There is no law of California under which the ordinance here involved, considered as a franchise, could have been lawfully granted. The ordinance itself purports to have been granted solely under the authority contained in the franchise act of 1893 (Stats. Cal. 1893, p. 298) hereinabove set out in full.

The act of 1893 does not pretend to authorize the granting of franchises. Its obvious purpose is to put a limitation upon the exercise of power to grant franchises conferred by other acts. The language is that "every franchise

* * * hereafter proposed to be granted * * * shall be granted upon the conditions in this act provided, and not otherwise." The conditions provided in the act are those of purchase and sale. In other words, no franchise can be voted as a gratuity. It must be sold, and sold to the highest bidder. The plain object of this statute was to limit the exercise of authority to grant franchises conferred by other acts of the legislature. It was never intended to be itself a grant of authority to vote franchises. It was an act limiting power conferred by other legislation.

It is therefore clear that, considered as a franchise, there is no authority whatever for the passage of the ordinance here involved.

(*b.*) Assuming, however, that the act of 1893 does authorize the granting of such a franchise, there is no provision therein, nor is there any provision elsewhere to be found, which authorizes the granting of an *exclusive* franchise. It is clear that authority to grant a franchise never carries with it power to grant an exclusive franchise.

Minturn *vs.* La Rue, 23 How., U. S., 435.

Citizens' Street Railway *vs.* Detroit Railway, 171 U. S., 48.

(*c.*) The grant of the franchise was invalid for the reason that it was not sold to the highest bidder, as required by the act of March 23, 1893. Merle bid $5,500. Sharon bid $2,510 and a percentage of the gross receipts. Merle was the highest cash bidder. The board of supervisors awarded the franchise to Sharon on the theory that his bid of a percentage of the gross receipts made him the highest bidder. This award was made February 17, 1896. A month later, March 17, 1896, the supreme court of California decided (Thompson *vs.* Board of Supervisors, 111 Cal., 553) that percentage bids were invalid, and that the statute required the award to be made to the highest cash bidder. The award

to Sharon was therefore void. Mode is the power of measure (Pacific Electric Company *vs.* The City of Los Angeles, 118 Fed., 746, 753, affirmed in this court April 11, 1904).

It is also clear that this point is open to us, for it is said in City of Zanesville *vs.* Zanesville Gas Light Company, 47 Ohio, 1; 23 N. E., 25, to quote from the syllabus:

> "*Wherever an incorporated company in any action asserts a right against another person, based upon an assumed franchise or power, the person against whom the right is so asserted may, as a defense, deny the existence of such franchise or power.*"

This same rule is laid down in Thompson on Corporations, section 5340.

In Waterloo Turnpike Road Co. *vs.* Cole, 51 Cal., 386, it is said:

> "But in the case at bar the point raised by the defendant is, that it affirmatively appears, from the plaintiff's evidence, that the board did not acquire jurisdiction to grant the franchise to collect tolls because of its failure to prescribe the location of gates, which was a condition precedent to the exercise of the power to grant the franchise. In other words, the proposition is, that the grant is void for want of jurisdiction in the board to make it, and not merely that the board erred in the exercise of its admitted jurisdiction. The distinction between the two cases is obvious; and it is too clear to require argument, that when the want of jurisdiction appears upon the face of the proceedings, as in this case, any one injuriously affected may avail himself of the defect, even in a collateral action."

We therefore submit that, whether it be considered as a contract under the police power or as the grant of a franchise, the ordinance here involved never had any legal existence, for the reason that it was never lawfully enacted.

V.

SOCIALISM HAS NOT BECOME SO DOMINANT A PRINCIPLE IN THE POLICE POWER THAT THE STATE CAN ASSUME OR FARM OUT A MONOPOLY OF ALL OF THE OCCUPATIONS SUBJECT TO REGULATION UNDER THE POLICE POWER.

In Iler *vs.* Ross (Neb.), 90 N. W., 961; 57 L. R. A., 895, it is decided that "scavenger work has a well accepted and defined meaning, and the occupation or business, lowly though it be, has existed and has been recognized and regulated for ages."

The proposition upon which this case was sustained in the circuit court of appeals is that the State may assume a monopoly of the occupation of collecting and destroying house refuse, and may, therefore, farm out that monopoly to "an agent of the State." This is laid down with respect to a calling which, though lowly, is an incident to civilized life in all large cities—to a calling which engages the activities and brings a livelihood to great numbers of persons. The calling is on a plane with tanning, carpet-beating, the manufacture of soap, laundering, and other similar occupations. If the State (or a political subdivision) can assume or farm out a monopoly of the occupation of collecting and destroying refuse, upon what theory can it be denied the right to assume or farm out a monopoly of tanning, manufacturing soap, carpet-beating, laundering, and other similar occupations?

Is it possible that the police power of the State has grown so great that it now embraces authority to accomplish all these results?

We claim not.

In Lawton *vs.* Steele, 152 U. S., 133, it is decided that to justify the exercise of the police power the public interest

must require the interference, and *the measures adopted must be reasonably necessary for the accomplishment of the purpose.*

In Allgeyer *vs.* Louisiana, 165 U. S., 578–589, it is held that "the right to follow any of the common occupations of life is an inalienable right."

The ordinance here involved violates, so we claim, the principles laid down in the cases cited.

We know of no case decided by this court where the authority of a State to assume or farm out a monopoly of a calling confessedly subject to police regulation has ever been considered. The case at bar sustains the exercise of such power by a municipality which has been granted no special powers upon these subjects. The decision of the circuit court of appeals therefore practically establishes that such a power exists in every municipality of the country.

We respectfully suggest that before such an application of the police power becomes imbedded in the jurisprudence of the country, the point should have the consideration and be the subject of a decision of this court.

Your petitioners therefore respectfully request that their petition for a writ of certiorari herein be granted as prayed.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 25.

THE CALIFORNIA REDUCTION COMPANY ET AL.,
PETITIONERS,

vs.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, RESPONDENT.

BRIEF ON BEHALF OF PETITIONERS.

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THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, RESPONDENT.

BRIEF ON BEHALF OF PETITIONERS.

STATEMENT OF THE CASE.

This case is here on a writ of certiorari to the United States circuit court of appeals for the ninth circuit.

The suit was commenced to enforce an ordinance of the city and county of San Francisco—the existence and validity of the ordinance being called into question—whereby there was granted to the assignor of respondent the *exclusive* privilege to receive and reduce by incineration, *for a period of fifty years*, all house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones, other like matter, dead animals, putrid vegetable matter, and fish, flesh, or food condemned by the board of health as

unfit for human food, found within the city and county of San Francisco.

By the terms of the ordinance (which is known as order No. 2965, and is fully set out in the record, beginning at the bottom of page 5 and again pages 324) all the substances named are required to "be forthwith delivered to the crematory therein provided for, and there, at the expense of the person or corporation so conveying the same, be cremated or destroyed," etc.

The price required to be paid for the cremation or destruction of the substances named is twenty cents per cubic yard.

The circuit court for the northern district of California obtained jurisdiction by reason of diversity of citizenship. The complainant was a California corporation. The California Reduction Company was a Colorado corporation, organized for the purpose of removing from San Francisco, by boats and barges, house refuse and garbage for destruction beyond the municipal limits. The other defendants, about 140 in number, are subjects of the King of Italy, and pursue the occupation of scavengers in San Francisco, "*and about half a dozen of them are shown to be householders in the city of San Francisco*" (Record, p. 410).

In its opinion upon an application for an injunction *pendente lite*, the circuit court upheld the ordinance in question, under an act of the legislature of California (Stats. Cal. 1893, p. 288) regulating the sale of franchises.

This act read as follows:

> "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises (approved March 23, 1893).
>
> "The people of the State of California, represented in senate and assembly, do enact as follows:
>
> "SECTION 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate railroads along or upon any public street or highway, or to exercise any other privilege whatever

hereafter proposed to be granted by the board of supervisors, common council, or other governing or legislative body of any county, city and county, city, town or district within this State, shall be granted upon the conditions in this act provided, and not otherwise. The fact that an application for such franchise or privilege has been made to such board of supervisors, common council, or other governing or legislative body, together with a statement that it is proposed to grant the same, must first be advertised in one or more daily newspapers of the county, city and county, city, town or district wherein the said franchise or privilege is to be exercised. Such advertisement must continue every day for at least ten days, and must commence at least thirty days before any further action of the board of supervisors, common council, or other governing or legislative body. The advertisement must state the character of the franchise or privilege proposed to be granted, the terms of its continuance, and, if a street railroad, the route to be traversed, and the day on which tenders will be received for the same. On the day so stated, the board, or other governing or legislative body herein mentioned, must meet in open session and read the tenders. The franchise or privileges must then be awarded to the highest bidder: *Provided, however*, That nothing in this section shall affect a special privilege granted for a shorter term than two years.

"SECTION 2. Any member of any board of supervisors, common council, or other governing or legislative body of any county, city and county, city, town or district of this State, who, by his vote, violates or attempts to violate the provisions of this act or any of them, shall be guilty of a misdemeanor and of malfeasance in office and be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction.

"SECTION 3. This act shall take effect immediately."

Subsequent to the granting of the preliminary injunction, issue was joined and the case tried. Judgment passed for

the complainants, and thereupon the respondents (petitioners here) prosecuted an appeal to the circuit court of appeals for the ninth circuit.

The petitioners here claimed in the circuit court of appeals that the ordinance was in no sense a franchise, but a mere monopoly of a hitherto common right, and if sustained at all, could only be sustained as a contract or a grant of monopoly under the police power.

In support of their position, that the ordinance in question was in no sense a franchise, the petitioners cited Bank of Augusta *vs.* Earle, 13 Peters, 595; People's Railroad *vs.* Memphis Railroad, 10 Wall., 51; California *vs.* Pacific Railroad Co., 127 U. S., 40.

They furthermore cited State *vs.* Green, 112 Ind., 462; 14 N. E., 352, in which it was decided that a physician's license is in no sense a franchise, although criminal for any person to exercise the calling of a physician without a license, and People *vs.* Matthews, 53 Ill. App., 305, wherein it was decided that the right to license the traffic in intoxicating liquors is found in the police power of the State, and that a license granted thereunder does not come within any definition of a franchise.

The circuit court of appeals did not uphold the ordinance as a franchise, but upheld it as a contract under the police power, leaving open, however, the question whether it could not also be upheld or maintained as a franchise.

The court said (Record, p. 420):

> "Inasmuch as we have arrived at the conclusion that the rights and privileges conferred by the board were constitutional and valid in the proper exercise of the police power of the State, and could be sustained as a contract, it seems to us unnecessary to further discuss the question whether it could also be upheld and maintained as a franchise."

In support of our application for a writ of *certiorari*, we relied upon, and we now rely upon, the following five propositions:

I. Considered either as a franchise or a contract under the police power, the ordinance here involved is a violation of the fourteenth amendment of the Constitution of the United States, for the reason that for a period of fifty years it deprives the householders of San Francisco of property of commercial value by transferring that property to the respondent, and this without requiring compensation to be made.

II. Conceding the ordinance here involved to be in all other respects constitutional and valid, it is nevertheless invalid for the reason that there is no authority of law whatever to sustain the provision therein contained which requires the householders of San Francisco to pay twenty cents per cubic yard for the reduction of the substances taken from them and given to the respondent by the ordinance here involved.

III. Considered either as a contract under the police power or as a franchise, the ordinance here involved never had any legal existence for the reason that it was never lawfully enacted.

IV. Considered as a franchise, the ordinance is invalid for want of power to grant the franchise and for a violation of the prescribed mode in the granting thereof, if there were power to grant the same.

V. Socialism has not become so dominant a principle in the police power that the State can assume or farm out a monopoly of all of the occupations subject to regulation under the police power.

For a copy of the ordinance here involved (order No. 2965), see appendix, page 47.

THE ARGUMENT.

I.

CONSIDERED EITHER AS A FRANCHISE OR A CONTRACT UNDER THE POLICE POWER, THE ORDINANCE HERE INVOLVED IS A VIOLATION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, FOR THE REASON THAT FOR A PERIOD OF FIFTY YEARS IT DEPRIVES THE HOUSEHOLDERS OF SAN FRANCISCO OF PROPERTY OF COMMERCIAL VALUE BY TRANSFERRING THAT PROPERTY TO THE RESPONDENT, AND THIS WITHOUT REQUIRING COMPENSATION TO BE MADE.

In the circuit court of appeals we claimed (Record, p. 413, pt. 13) that the ordinance here involved was "invalid because it deprives the owner thereof of property of commercial value without any necessity and without compensation."

This point is stated by the court as one of the propositions upon which we relied, but the proposition is nowhere considered in the opinion of the court.

We submit that the ordinance does deprive the householders of San Francisco of property without any compensation.

The ordinance makes it obligatory upon every inhabitant of the city and county of San Francisco to forthwith deliver to the complainant, for reduction and retention by it, all house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones, other like matter, dead animals, putrid vegetable matter, and fish, flesh, and food that may be condemned by the board of health as unfit for human food, and to pay twenty cents per cubic yard for the reduction of all of the enumerated substances.

There is no opportunity under this ordinance for any householder in San Francisco who may generate any of

these substances, and who is, therefore, the owner of them, to make any disposition of them whatever. He is required by the ordinance to deliver them to the complainant for reduction and retention, and he is forbidden (and among those who are so forbidden are the six petitioners who are householders in San Francisco) to convey any of these substances beyond the limits of the city and county of San Francisco.

It is therefore clear beyond discussion that for fifty years all property in the substances named is required to be surrendered by the inhabitants of San Francisco to the complainant.

Indeed, the obligation is not limited to the surrender, for by the terms of the ordinance the householder must pay twenty cents per cubic yard for the reduction of the property surrendered.

Nor can it be claimed that the articles required to be surrendered have no value whatever. It is shown in the proofs that a number of the substances mentioned are not only of value, but that they have a commercial value and are subjects of quotation in the daily fluctuating market reports, as, for instance, bones.* This is likewise true of broken crockery and tins. It is likewise true of house refuse as distinguished from garbage. It is decided in Alpers *vs.* San Francisco, 32 Fed., 506, that it is likewise true of dead animals.

---

*The invalidity of the ordinance here in question, upon the ground that it involved the confiscation of property, was asserted by the petitioners in their answer to the bill of complaint (pages 34, 39, 56, 64, 65, 66). This point is made the subject of an assignment of error by petitioners (Record, pages 385, 386, 387, 388, 389, 390, 391, 402). The following witnesses gave testimony upon the subject: Behrend Joost (pages 100, 110, 122, 123, 124, 125, 126, 127, 136); M. D. Levenson (pages 137, 140, 141, 142, 143, 145, 147); L. R. Ellert (page 115); Luigi Ferrari (page 149); D. Picetti (page 160); Frederick Minatti (page 165); Frederick Boicello (page 172); Guiglermo Varno (page 183). See also Exhibit "A," Record, page 324, and Complainant's Exhibit "D," page 333.

Furthermore, it is expressly alleged in the bill of complaint that the substances mentioned in the ordinance "*are of value as articles of commerce.*"

The language is (Record, p. 18):

> "And your orator further shows unto your honors that *portions* of *all* of the garbage and other materials mentioned and described in said orders, ordinances and resolutions, *are of value as articles of commerce*, after being treated and reduced by your orator by processes both of reduction and incineration, which said articles of commerce when so reduced and incinerated, are and have been heretofore sold and disposed of by your orator at a profit, and in this way it has derived a revenue and is remunerated for a portion of the labor and expense incurred by it in incinerating and cremating the garbage and refuse matter, with which said articles of commerce are mixed and combined."

It will therefore be seen that it is an undisputed fact that the householders of San Francisco are required to surrender to the complainant all of the substances specified in the ordinance, *including portions thereof which are of value as articles of commerce.*

Nor is the value of this property so confiscated trifling in amount. On the contrary, the record shows that it has large value, which will obviously grow greater with the years. The complainant commenced business as a reduction company November 1, 1897. In the two months following its gross receipts amounted to $7,010.45 (Record, p. 15). This was equivalent to a gross annual income of $42,062.70. According to the testimony of the president of the complainant, the average amount of house refuse, &c., generated in San Francisco at the time he gave his testimony, which was in 1899, was 500 loads per day (Record, p. 113, Q. 24). Of this amount, according to the testimony of the president of the corporation, 250 loads per day were being diverted from the complainant (Record, p. 113, Q. 27). The diversion

involved a loss of *profits* of $2,000 a month (Record, p. 114, Q.'s 28 to 32). This testimony was given March 28, 1899 (Record, p. 96). During the year 1898 the gross receipts were $46,584.20 (Record, p. 332).

It is therefore evident that it cannot be claimed that the substances required to be delivered to the complainant are of inconsequential value and cannot be made the subject of commercial transactions or of profits in amounts which are of consequence. Under these circumstances we submit that the ordinance is a substantial violation of the fourteenth amendment.

In State *vs.* Robbins, 124 Ind., 308; 24 N. E., 978, there was involved the ordinance providing for the destruction of gaming devices. It is declared in the opinion that "unless, "therefore, the articles seized are of such a character that "the law will not recognize them as property, entitled as "such to its protection *under any circumstances*, they cannot "be summarily destroyed without affording the owner an "opportunity to be heard upon the subject of their lawful "use."

In a number of cases bearing very close analogy to the case at bar it is decided that ordinances like that here involved are unconstitutional because they involve a confiscation of property.

It is so decided in the following cases:

Meyer *vs.* Jones (Ky.), 49 S. W., 809 (1899).

Iler *vs.* Ross (Neb.), 90 N. W., 961; 57 L. R. A., 895 (1902).

River Rendering Co. *vs.* Behr, 77 Mo., 91; 46 Am. Rep., 6.

Knauer *vs.* City of Louisville, 45 S. W., 510 (Ky., 1898).

State *vs.* Morris, 47 La. Ann., 1664; 18 So., 710.

Underwood *vs.* Green, 42 N. Y., 140.

Schoen *vs.* The City of Atlanta, 97 Ga., 697; 25 S. E., 380.

Gregory *vs.* Mayor, 40 N. Y., 273.

In order that it may be made manifest that these cases decide the point to which they are cited, we have taken the following extracts from some of them:

Meyer *vs.* Jones:

> "A city ordinance providing for the removal of carcasses of dead animals, and fixing charges therefor, is void *unless it gives the owner of a dead animal the right to remove it or have it removed*, within a prescribed time before the public contractor takes charge thereof."

Iler *vs.* Ross:

> "Many other substances coming within the meaning of the language of the ordinance in the nature of *debris*, rubbish, and other waste material which might be specifically mentioned, *could probably be used for some beneficial purpose*, and many others having no utility like those referred to are not within themselves nuisances and a menace to the health of the public. *It is quite true their accumulation in unreasonable quantities and for an unreasonable length of time would render them nuisances, and to prevent which all reasonable regulations may be imposed.* * * *
>
> "*Not only is the owner's property taken from him when he could perhaps dispose of it* or make arrangements for its disposal to some advantage, *but he is compelled to bear the expense of the taking.* We cannot believe such an ordinance can be justified and upheld by the application of any sound principle of law."

In River Rendering Co. *vs.* Behr, 77 Mo., 91 (S. C., 46 Am. Rep., 6), an ordinance and franchise similar in principle to the one in the present case authorized the rendering company to remove and appropriate all carcasses of animals found in the city of St. Louis not slain for food, *without preserving to the owner any right to first dispose of the carcass.* The principle now contended for was recognized by the court in the following language:

> "The ordinance in question cannot be maintained as a police regulation. It can never be necessary to

take from one man his property and give it to another, until the property is in such condition that it is, or is so used that it is likely to become a nuisance; and even in the latter case, until it has become a nuisance, *an opportunity should be given the owner to change the use, or make such disposition of his property as will prevent the apprehended danger.* * * *

"By this ordinance, as construed by the two courts which have passed upon it, the property of A, in his dead hog, or bullock, is transferred to B, without the intervention of courts or juries, and with no formality whatever, except a notice from the police department of the city, that the hog or bullock is dead, and is to be found at a given place, which may be on the owner's premises in his own possession. The ordinance does not declare that all dead animals found in the city, not killed for human food, are nuisances, and if it did, such a provision could not be upheld. A dead hog, or steer or sheep is not *per se* a nuisance. It was so ruled by the New York court of appeals in Underwood *vs.* Green, 42 N. Y., 140. It was there observed that: 'A dead hog is not *per se* a nuisance, even though it died of suffocation, and is not necessarily dangerous to public health. The owner may still put it to a useful and innocent purpose.' While a dead animal is not *per se* a nuisance, it may become so, and the city, under her charter, may pass such ordinances as are necessary to prevent it from becoming a nuisance, *but she must in such legislation pay a proper regard to the rights of the owner of such property.*

"*The death of a domestic animal does not terminate the owner's property*, and while he may be required to make such use or disposition of the carcass as will prevent a nuisance, stench or other inconvenience to the neighborhood, the municipal authorities cannot arbitrarily deprive him of his property by giving it to another."

In Knauer *vs.* City of Louisville (Kentucky), 45 S. W. Rep., 510, a public contractor was, by ordinance, given the exclusive privilege of removing the carcasses of dead animals. The owner could direct the disposition of the carcass by

paying the public contractor certain fees, which fees were found to be practically prohibitory. The court says:

> "The sole question in this case is whether the city can pass an ordinance which fixes the fees to be paid to the public contractor for the removal of the carcasses of dead animals out of the city at such sums that their owners cannot pay them and realize anything out of them. Can the city in this indirect way confiscate the property of its owner and give it to the public contractor? Dead animals are not *per se* nuisances, and the owner's property rights do not cease at the death of the animal. Until such becomes a nuisance, the owner should have the right to realize whatever he can from it. Under the police power, the municipality certainly has the right and it is its duty to prevent carcasses of dead animals from becoming nuisances; *and to that end it may prescribe the manner of and the time in which the owners shall remove or permit them to be removed.* The employers of the appellant can remove the carcasses as speedily and in a manner that will cause as little offense to the public sense and taste as can the contractor. They can realize considerable sums by the sale of the carcasses by being permitted to make the removal. (After quoting from authorities.) It requires no argument to show that neither a municipal or other government can take one man's property and give it to another. * * * The effect of an ordinance which does not allow the owner of a dead carcass to remove it, but requires him to pay a fee for its removal which is greater than its value, is precisely the same in effect as an ordinance which takes the carcass from one person and gives it to another."

In State *vs.* Morris, 47 La. Ann., 1664, the court, passing upon a similar ordinance, say:

> "We rest the case entirely on the ground that the owner is entitled to a reasonable time after the death of an animal to dispose of it or cart it away under the requirements of existing ordinances. The situation and the climate may render it necessary to permit very little time and opportunity for removal. In

adopting ordinances which must necessarily be general the owner may be allowed but little time (if public safety requires) for the removal of his dead animals. The authorities agree that the removal must be made as ordained, and that the courts cannot contest the manner in which it shall be done and under what sanitary condition, if reasonable. *However limited may be the right of removal it cannot be denied entirely without conflicting with the laws regulating police power.*"

Upon the foregoing authorities we submit that the ordinance here involved does violate the constitutional provision which declares that property shall not be taken without compensation.

II.

CONCEDING THE ORDINANCE HERE INVOLVED TO BE IN ALL OTHER RESPECTS CONSTITUTIONAL AND VALID, IT IS NEVERTHELESS INVALID FOR THE REASON THAT THERE IS NO AUTHORITY OF LAW WHATEVER TO SUSTAIN THE PROVISION THEREIN CONTAINED WHICH REQUIRES THE HOUSEHOLDERS OF SAN FRANCISCO TO PAY TWENTY CENTS PER CUBIC YARD FOR THE REDUCTION OF THE SUBSTANCES TAKEN FROM THEM AND GIVEN TO THE RESPONDENT BY THE ORDINANCE HERE INVOLVED.

In the circuit court of appeals we argued (Record, p. 412, pt. 7) "that there is no authority of law for the imposition of the compulsory payment of twenty cents a cubic yard upon the householders of the city and county of San Francisco."

Although it is stated in the opinion of the circuit court of appeals that this point is made by us, the proposition is nowhere considered by it.

There is no law upon this subject peculiar to California. In other words, there is no law in the State of California which in terms or by necessary or other implication author-

ized any municipal corporation to impose such a burden as that involved in the charge of twenty cents a cubic yard for the reduction of the substances mentioned. It is true that constitutional and statutory provisions exist in California, whereby there is conferred upon the municipalities of that State the usual powers of local police. If such powers of local police, which have been granted to nearly all of the municipalities of the country, carry by necessary implication power to impose a charge like that here involved, then such power exists; otherwise the power is entirely wanting.

As already stated, there is no legislation in California directly covering the matter here involved, and if it exists at all it must arise out of the power granted in general terms to legislate with respect to matters of local police. In that event such power has been conferred upon and inheres in practically every municipal corporation in the country.

We submit that no such power exists as an incident to the grant of the powers of ordinary local police, and that therefore there is no law in California which authorized or authorizes such a provision.

The Slaughter-house case (16 Wall., 36) is not authority for the imposition of the charge. The law-making power in that case was the sovereign law-making authority of the State of Louisiana, while here we have a mere municipal corporation, which has only such authority as is delegated to it by a sovereign law-making power.

There is not a single reported case which sustains the exercise by municipal authorities of such a power. There was one case cited to the point in the courts below, namely, Walker *vs.* Jamieson, 140 Ind., 591; 37 N. E., 402; 39 N. E., 869; 28 L. R. A., 679; 49 Am. S. Rep., 222. In that case, however, in answer to a petition for a rehearing, the portion of the decision which affirmed a provision imposing a charge somewhat similar to that here involved *was expressly withdrawn.*

III.

CONSIDERED EITHER AS A CONTRACT UNDER THE POLICE POWER OR AS A FRANCHISE, THE ORDINANCE HERE INVOLVED NEVER HAD ANY LEGAL EXISTENCE, FOR THE REASON THAT IT WAS NEVER LAWFULLY ENACTED.

The ordinance here involved was attacked upon the ground that it had never been passed for the reason that it had never received the signature of the mayor of San Francisco (Record, pp. 49, 97).

The circuit court decided that the ordinance did not require the signature of the mayor for the reason that it was the grant of a franchise under the franchise act of 1893 (Stats. Cal. 1893, p. 288).

The circuit court of appeals, as already shown, put its decision upon the ground that the ordinance was a contract under the police power and did not undertake to decide whether it was a franchise or not.

The circuit court of appeals, however, decided that the ordinance did not require the signature of the mayor for reasons presently to be mentioned.

We now proceed to show that, whether it be a contract under the police power or a franchise under the act of 1893, the ordinance failed of passage for the reason that it never received the signature of the mayor.

(a.) Considered as a contract under the police power, the ordinance required the signature of the mayor after having been passed in accordance with section 68 of the act consolidating the city of San Francisco and the county of San Francisco (Stats. Cal. 1856, p. 164).

Section 68, in so far as it applies to the question here involved, reads as follows:

> "Every ordinance or resolution of the board of supervisors, providing for any specific improvement,

the granting of any privilege, or involving the lease, or other appropriation of public property, or the expenditure of public moneys (except for sums less than five hundred dollars), or laying tax or assessment, and every ordinance or resolution, imposing a new duty or penalty shall, after its introduction in the board, be published, with the ayes and nays, in some city daily newspaper, at least five successive days, before final action by the board upon the same; and every such ordinance, after the same shall pass the board shall, before it takes effect, be presented to the president of the board for his approval. If he approves, he shall sign it; if not, he shall return it, within ten days, to the board, with his objections, in writing. The board shall then enter the objections on the journals, and publish them in some city newspaper. If at any stated meeting thereafter, two-thirds of all the members elected to the board, vote for such ordinance or resolution, it shall then, despite the objections of the president, become valid. Should any such ordinance or resolution not be returned by the president, within ten days after he receives it, it shall become valid the same as if it had received his signature."

It will be noted that under section 68 the approval of the mayor is required to

(*a.*) Every ordinance *or resolution* of the board of supervisors providing for * * * the granting of any privileg;

(*b.*) Every ordinance *or resolution* * * * laying tax or assessment;

(*c.*) Every ordinance *or resolution* imposing a new duty;

(*d.*) Every ordinance *or resolution* imposing a * * * penalty.

We claim that order No. 2965 comes within three of the four clauses above specified, because:

(a.) Order No. 2965 provides for the granting of the privilege of incinerating garbage and charging twenty cents a cubic yard therefor;

(c.) Order No. 2965 imposes a new duty, namely, a compulsory charge of twenty cents a cubic yard upon all of the producers of garbage in San Francisco during a period of fifty years, and section 4 requires garbage to be delivered to the holder of the franchise.

(d.) Any violation of sections 3 and 4 of the ordinance is made a misdemeanor by section 12 thereof.

Bearing this in mind, we proceed to give the history of the proceedings taken by the board of supervisors in regard to the alleged passage of order No. 2965, the franchise or contract here involved:

November 8, 1895, A. M. Skelly applied to the board of supervisors for a franchise to cremate garbage (Record, p. 370).

November 15 the committee on health and police submitted to the board a proposed form of order for a franchise (Record, p. 371).

November 18, 1895, the board of supervisors passed a resolution numbered resolution No. 13231 (3d series), wherein the clerk of the board was directed to advertise for proposals for the sale of a franchise "conferring the rights "and privileges as specified in and under the provision of "the following *proposed* order" (Record, pp. 345–350).

November 26, 1895, the clerk of the board of supervisors published his notice for the sale of said franchise inviting sealed proposals which were to be opened January 6, 1896 (Record p, 356).

January 6, 1896, three bids were received from L. V. Merle, F. E. Sharon, and A. M. Skelly (Record, pp. 357-358).

January 6, 1896, the proposals were referred to the committee on health and police (Record, p. 637).

February 3, 1896, the committee reported in favor of awarding the franchise to L. V. Merle (Record, p. 359).

February 17, 1896, the *proposed* order set forth in resolution No. 13,231 and in the advertisement of the clerk soliciting sealed proposals was given the number order No. 2965, certain blanks therein were filled in and it was taken up and passed. Eight supervisors voted in favor of the order, and four supervisors against the same (Record, pp. 359-365).

It will be seen from the foregoing statement and an examination of the record that the board of supervisors always contemplated that action legislative in character was required to be taken by the board after the highest bidder had been ascertained. The board of supervisors plainly contemplated that what it tendered to the public and what it invited sealed proposals upon was a *proposed* order. In other words, the board of supervisors, in effect, stated to the public, "if you will bid upon this proposed order we will pass "an order after the bidding has occurred and the highest "bidder has been ascertained, whereby a grant of the specified franchise will be made to that highest bidder." The entire proceedings were based upon that idea. Why the idea was not followed out it is impossible to say. It does appear, however, that a sufficient number of supervisors voted against order No. 2965 to render its adoption impossible if the mayor were opposed thereto.

The vote upon order No. 2965 was eight supervisors favoring it and four opposing it. The consolidation act (Stats. Cal., 1856, p. 164) provided eight supervisors could override a veto by the mayor. The number, however, was changed to nine in 1868 (Stats. Cal., 1867-8, p. 702). It will be therefore seen that there were not a sufficient number of super-

visors to adopt this ordinance had the vote remained the same and had the mayor vetoed it (Record, p. 363).

The legislative action of the board of supervisors prior to the ascertainment of the highest bidder was not sufficient to confer the franchise upon the highest bidder when ascertained.

The only act of the board of supervisors in relation to the proposed franchise prior to the bidding was the passage of resolution No. 13231 (3d series), which was passed on November 18, 1895 (Record, p. 345). This resolution was a direction to the clerk to advertise for proposals for the sale of a franchise under the provisions of a *proposed* order. In other words, the board of supervisors invited bids for a franchise which it intended to grant by an ordinance subsequently to be passed. The ordinance which it proposed to thereafter adopt (but which it never did adopt), was embodied in resolution No. 13231.

The reasons which we have for saying that it was proposed to first ascertain the highest bidder and then to pass *an ordinance* are these:

(*a.*) Throughout resolution No. 13241, the ordinance which the board contemplated would be passed is styled a *proposed* order.

(*b.*) The proposed order has an enacting clause, to wit: "The people of the city and county of San Francisco do "ordain as follows:"

(*c.*) Section 11 provides that the grantee must accept the franchise within ten days from "the approval of this order." Approval plainly refers to the approval by the mayor mentioned in section 68 of the consolidation act. The word "approval" in this connection could have no other meaning. See Century Digest, vol. 36, col. 224, for various decisions upon the subject of approval of municipal ordinances.

(*d.*) The proposed order makes certain act misdemeanor, power which could not be exercised in the city and county of San Francisco except by an ordinance.

(*e.*) The proposed measure is called an *order*, which is the term which has been employed in San Francisco since 1856 to denote an ordinance.

These reasons, and others which might be stated, show that resolution No. 13231 was a mere invitation to the public to bid for a franchise which was to be conferred by an ordinance to be passed after the highest bidder was ascertained. *Consequently the municipal authorities did not determine in a legal way to grant the franchise by any action had prior to the opening of the bids.*

The board of supervisors intended to pass order No. 2965 as an ordinance, and have the same approved by the mayor after publication, as required in section 68 of the consolidation act. This was never done, and hence the order was never adopted.

Section 68 of the consolidation act requires every ordinance or resolution therein mentioned to be passed twice. Between its first passage and its last passage it must be published in a daily newspaper at least five consecutive days with the ayes and nays of its first passage. We believe that there is no general provision which requires any ordinance or resolution of the board of supervisors to be published, except that contained in section 68. (We speak, of course, of the state of the law before the present freeholders' charter of San Francisco went into effect for all purposes, which was in January, 1900.)

In view of these facts, it is very evident that when the board of supervisors adopted order No. 2965 on February 17, 1896 (Record, p. 363), they passed this order for the first time as required in section 68 of the consolidation act.

The order itself contained the provision that "the clerk is "hereby directed to advertise this order as required by law" (Record, p. 362).

The clerk, however, did not advertise it for the time required by law. Nor was the ordinance passed a second time as required by section 68. The reasons which we have already adduced show that it was the intention of the board of supervisors to adopt order No. 2965 *as an ordinance*, to have it published, to have it passed by the board of supervisors a second time, and to have it approved by the mayor. Why this was not done we do not know.

It will be therefore seen that the board contemplated that the ordinance would be put to final passage and ultimately be submitted to the mayor for his approval. In point of fact it never was put to final passage, nor submitted to the mayor, and it is the established law in California that under such circumstances the ordinance has no legal existence.

Eisenhuth *vs.* Ackerson, 105 Cal., 87.
Creighton *vs.* Manson, 27 Cal., 614, 630.
Spring Valley W. W. *vs.* Ashburn, 52 Cal., 126.
Pollock *vs.* San Diego, 118 Cal., 593.

In Eisenhuth *vs.* Ackerson, the validity of a street railroad franchise was involved which had been passed by ten members of the board of supervisors of the city and county of San Francisco. The franchise had been vetoed by the mayor, and his veto was subsequently sustained by a new board. The grantee of the franchise claimed that it was valid without the signature of the mayor, but the supreme court held that the ordinance was "an ordinance granting a privilege," in the sense of section 68 of the consolidation act, and required the approval of the mayor.

In the circuit court of appeals, counsel for appellee (respondent here) argued that the provision of section 68 of the consolidation act, requiring the approval of the mayor, had been repealed by implication by the act of April 25, 1863 (Statutes

1863, p. 540), entitled an "Act to confer *further powers* upon "the board of supervisors of the city and county of San "Francisco," by the use of the language in section 1 of said act that "the board of supervisors of city and county of "San Francisco shall have power *by regulation or order*." * * * "Second: To authorize and direct the summary "abatement of nuisances, to make all regulations which may "be necessary or expedient for the preservation of the pub- "lic health and the prevention of contagious diseases," etc.

"The court will observe" (says counsel in his brief in the court below) "that the act of 1863 confers this police power "on the board of supervisors and provides that they shall "exercise that power '*by regulation or order*.' Now, the "terms 'regulation or order' do not mean and cannot be "construed as being synonymous with either 'ordinance' "or 'resolution.' Section 68 of the consolidation act pro- "vides that 'every *ordinance* or *resolution* requiring certain "things to be done should be published and presented to "the mayor,' etc., but the police power given by the act of "1863 is given to the board of supervisors to be exercised "by '*regulation* or *order*.'"

This argument might have merit (1) if the use of the words "regulation or order" were new in the act of 1863, or if that act for the first time conferred "police powers" on the board of supervisors. But this is not true. The act of 1863 is an amendment of section 74 of the consolidation act. The original section 74 as passed contemporaneously with section 68, in 1856, in part, reads as follows:

> "SEC. 74. The board of supervisors shall further have power by *regulation or order*. * * *
>
> "Third. To provide by regulation for the prevention and *summary removal* of nuisances to public health, the prevention of contagious diseases, the prevention and summary removal of all nuisances and obstruction in the public streets and highways.
>
> "Fourth. To provide * * * for opening, alter-

ing, extending, planking, paving or repaving, or otherwise improving of public streets, etc.

"Fifth. Providing for lighting and cleaning the streets.

"Seventh. To provide for the erection, repair and regulation of wharves and docks, and fixing the rates of wharfage thereat.

"Eighth. To provide for improving of public grounds.

"Ninth. To prohibit the erection of wooden buildings within fixed limits, etc., etc."

Were all these acts to be performed under anything less than a solemn legislative act known as "ordinance" approved by the mayor?

Following the argument of counsel the circuit court of appeals decides against us the point that order No. 2965 requires the approval of the mayor in the following language (Record, p. 420).

"Order No. 2965 is claimed to be invalid because it was "not signed by the mayor *as required by the act of* 1893, and "in this connection it is claimed that the words found in the "statutes of California 'by regulation or order' are synony- "mous with the words elsewhere used 'ordinance and reso- "lution.' Admitting that these words may often be used to "express the same meaning, it does not necessarily follow "that in all cases the word 'order' is synonymous with 'or- "dinance,' or that the word 'resolution' is synonymous with "'regulation.' It is enough to say that by section 1 of the "act of 1863 the municipality was authorized to proceed "under the police power 'by order and regulation' to do the "things mentioned in order No. 2965 and order No. 12 (sec- "ond series).

"In People *vs.* Counts, 89 Cal., 15, 22, it was claimed tha "the board should have proceeded by ordinance and not by "order. The court said: 'Conceding that the county gov- "'ernment act for some purposes requires an ordinance, "'whilst for other purposes only an order is required, it is

"'only necessary in answer to this objection, to say that for "'the purposes under consideration section 37 of the act re-"'quires the board to do what it is thereby required to do "'"by order."'"

(The circuit court of appeals was in error in saying that we had claimed that the mayor's signature was made necessary by the act of 1893. Our claim was that it was made necessary by section 68 of the charter of San Francisco, commonly called the consolidation act.)

The court of appeals decides that the police powers of the city and county of San Francisco can be exercised by order or regulation, and that hence the provision that every ordinance and every resolution must receive the signature of the mayor does not apply to the exercise of the police power for the reason such powers may be exercised by order or regulation. In the city and county of San Francisco during a period of forty-three years the word "regulation" and the word "order," used in the consolidation act quoted by the circuit court of appeals, have been universally understood to mean "ordinance." In that time there were no ordinances (so called) passed by the common council of that municipality, but there were adopted during that time 3,398 orders and 50,953 resolutions. Among these are many orders and resolutions passed under the police power of the city, every one of which has received the approval of the mayor after having been published in accordance with the provision of section 68 of the consolidation act.

Section 74 of the original consolidation act passed in 1856, as we have shown above, confers on the board of supervisors not only police powers, but also power by *regulation or order* "to provide in cases omitted in this act, and in conformity with the principles adopted in it, for open-ing, altering, extending, grading, * * * or otherwise improving of public streets," etc.

Section 40 of the same act provides that the *board of supervisors*, when they deem it expedient, *may order* the whole or

any part of a street to be graded. The supreme court of California has decided in the case of Creighton *vs.* Manson (27 Cal., 613) that a resolution of the board of supervisors of the city and county of San Francisco of intention to grade a street must be presented to the president of the board for approval, and if not so presented is void, for the reason that the legislative department of the city can act only through the medium of an ordinance, which the court says may be in the form of a resolution.

We respectfully submit that if the words "regulation or order" mean "ordinance" when applied to street work they mean the same thing when applied to "the police powers," particularly when the application is made not only in the same act, but in the very same section of the same act.

The following cases, Federal and State, deal with ordinances of the city and county of San Francisco *involving the police powers*. An examination of these cases and of the records therein will show that every one of these ordinances received the approval of the mayor, and that every one of them was known as "Order No. —:"

Spring Valley W. W. *vs.* Bartlett, 16 Fed., 615.

Alpers *vs.* San Francisco, 32 Fed., 503.

In re Ah Toy, 45 Fed., 795.

Electrical Improvement Company *vs.* San Francisco, 45 Fed., 593.

Electrical Improvement Company *vs.* Scannel, 45 Fed., 596.

In re Ah Lung, 45 Fed., 684.

National Fertilizer Company *vs.* Lambert, 48 Fed., 458.

Sanitary Reduction Works *vs.* Cal. Reduction Co., 94 Fed., 693.

Home of Inebriates *vs.* San Francisco, 119 Cal., 534.

Academy of Sciences *vs.* San Francisco, 107 Cal., 334.

Ex parte Christensen, 85 Cal., 208.

Anderson's Law Dict., page 738.) The terms by-laws, ordinances and municipal regulations have substantially the same meaning, and are defined to be the laws of the corporate district made by the authorized body, in distinction from the general laws of the State."

We claim and insist that the consolidated act which requires every ordinance and every resolution upon enumerated subjects to receive the signature of the mayor is so comprehensive as to include every legislative act of which a municipal body is capable. It is established by an overwhelming array of authority that a municipal body cannot act in a legislative way except through the medium of an ordinance or a resolution. The terms "ordinance" and "resolution" have been repeatedly decided to include every species of legislative action of which a municipal corporation is capable.

The following cases decide that a municipal body cannot act in a legislative way except through the medium of an ordinance or a resolution. The terms "ordinance" and "resolution" therefore include both regulation and order:

Dey *vs.* The Mayor, &c., 19 N. J. E., 412, 416.
Moser *vs.* White, 29 Mich., 59, 60.
People of Alton *vs.* Mulledy, 21 Ill., 76, 78.
People *vs.* Schroder, 76 N. Y., 160, 162.
State *vs.* The City Council, 37 Atl., 675, 676.
Erwin *vs.* Jersey City, 37 Atl. (N. J.), 732, 734.
Schuman *vs.* Seymour, 24 N. J. Eq., 143, 153.
State *vs.* Darrow, 67 N. W. (Minn.), 1012, 1014.
Elliott's Elements of Municipal Corporations, p. 176.
Pollock *vs.* San Diego, 118 Cal., 593, 595.
McGavock *vs.* City of Omaha, 58 N. W. (Neb.), 543, 549.
Sower *vs.* Philadelphia, 35 Pa., 231, 236.
City of Crawfordsville *vs.* Braden, 130 Ind., 149; 30 Am. St. Rep., 214, 224.
Creighton *vs.* Manson, 27 Cal., 614, 629.

Chicago, &c., R. R. Co., *vs.* Chicago, 51 N. E. (Ill.), 596, 598.

City of Alma *vs.* Guaranty Savings Bank, 60 Fed., 203, 206.

The corner stone of the decision of the United States circuit court of appeals seems to be the case of People *vs.* Counts, 89 Cal., 15, 22. We shall now proceed to show that that case is not an authority in point. That case arose under the county government act of 1883 (Stats. 1883, p. 299), which provides:

> "SEC. 37. The supervisors can only contract a bonded indebtedness other than such as is authorized by section twenty-six (misprint for thirty-six) of this act, as follows:
>
> "They shall, *by order*, specify the particular purpose for which the indebtedness is to be created, and the amount of the bonds which they propose to issue, *and shall* further provide for submitting the question of the issue of said bonds to the qualified electors, etc., notice of which election shall be published for four weeks."

Under this section the supervisors of Mariposa county made an order calling an election for the purpose of submitting the issuance of certain bonds to the people. The bonds were subsequently issued, and to test their validity an original application was made to the supreme court of California for a writ of mandate to the treasurer of the county commanding him to sell the bonds.

As against their validity, it was claimed that the board should have proceeded by *ordinance*, and not by *order*. In holding against this contention, the court used the language quoted by the circuit court of appeals, namely:

> "Conceding that the county government act for some purposes requires an ordinance, whilst for other purposes only an order is required, it is only necessary to say that for the purposes under consideration section 37 of the act requires the board to do what it is thereby required to do 'by order.'"

This case fails as an authority here for a number of reasons:

(1.) The county government act recognizes a plain distinction between an "ordinance" and "an order," as will be seen by reading section 26 of the act, which is in the following words:

> "SEC. 26. The enacting clause of all ordinances of the board shall be as follows: 'The board of supervisors of the county of —— do ordain as follows.' Every ordinance shall be signed by the chairman of the board and attested by the clerk. On the passage of all ordinances the votes of the several members of the board shall be entered on the minutes, and all ordinances shall be entered on the 'Ordinance Book.' No ordinance passed by the board shall take effect within less than fifteen days after its passage, and before the expiration of the said fifteen days the same shall be published, with the names of the members voting for and against the same, for at least one week in some newspaper published in the county, if there be one, and if there be none published in the county, then such ordinance shall be posted at the court house door at least one week. *An order* entered in the minutes of the board that such ordinance has been duly published or posted, shall be *prima facie* proof of such publication or posting."

It is plain from the foregoing section that an "ordinance" under this act is an act which must

(1) be signed by the chairman, and

(2) attested by the clerk; and

(3) votes thereon must be entered in the minutes, and

(4) entered on the "Ordinance Book," and

(5) published or posted for one week after its passage. But an "order" is simply entered in the minutes of the board.

The word "order," no doubt, was advisably used in section 37, for that section provides that such order shall be

published for four (4) weeks, and the publication of one week required for ordinances became unnecessary.

(2) There is a plain distinction between a county and a city or a city and county in California. A county is a political subdivision, a governmental agency of the State, while a city or a city and county is a municipal corporation or body politic. A county has no charter or fundamental law by which it is controlled in its legislative action. If the legislature says it shall act "by order," it has no mode of procedure to consult except that directly indicated by the legislature. It has no mayor to approve or veto its ordinances. Another distinction is that the powers of the county are directly conferred by the legislature irrespective of the will of the inhabitants thereof, whereas the inhabitants of a city are authorized to determine whether they will accept the corporate powers offered them, to be exercised by officers of their own selection.

Kahn *vs.* Sutro, 114 Cal., 316.

The ordinance, resolution, regulation, or order of a city is, therefore, a different matter than an ordinance or order of a county. The one is a corporate act, the other the act of a governmental agency. The city and county of San Francisco, under the constitution and consolidation act, is a municipal corporation possessing certain governmental functions derived from the county government act. But the board of supervisors authorized by the consolidation act are not the same body authorized by the county government act, although they bear the same name (Kahn *vs.* Sutro, 114 Cal., 316). When the board of supervisors acted in regard to the ordinance here involved, they acted in their capacity as municipal officers, and not as county officers. They acted under the charter, and not under the county government act, and therefore the case of People *vs.* Counts is no test of the sufficiency of their action in the case at bar.

In addition to the distinction indicated in the county gov-

ernment between the meaning of the words "ordinance" and "order," as used in that act, the county government act, if it applied to the city of San Francisco, would present one of the strongest instances of repeal by implication. The veto power is conferred for the benefit of the people, that they may have the judgment of the executive on matters of legislation; but why have his judgment on matters which are specially referred to the judgment of the people themselves? The veto power of the mayor in such instance would be utterly repugnant. (See the opinion of the United States circuit court of appeals of the eighth circuit in City of Alma *vs.* Guaranty Sav. Bank, 60 Fed., 203.

REPEAL BY IMPLICATION NOT FAVORED.

This rule is laid down in Bowen *vs.* Lease, 5 Hill, 221, in the following language:

"The inevitable rule of construction, in respect to the repealing of statutes by implication is, that the earlier act remains in force, unless the two are manifestly inconsistent with and repugnant to each other, or unless some express notice is taken of the former, plainly indicating an intention to abrogate it."

The rule laid down is approved by the supreme court of the State of California in

Perry *vs.* Ames, 26 Cal., 382;
People *vs.* Platt, 67 Cal., 21; and also
In re Mitchell, 120 Cal., 384.

The provision of section 68 of the consolidation act is intended for the protection of the city by giving it the benefit of the judgment of the mayor, whose veto message is published (Cons. Act., sec. 68). Such a provision of a city charter will not be deemed to have been repealed except by a statute expressly repealing the same or doing so by the strongest implication.

There is no repealing clause in the acts of 1863 and 1893, so that presumably no repeal was intended. Repugnancy must be clear, and this is peculiarly true in the case of local legislation when said to be repealed by general statutes. Such repeal does not take place except upon the most unequivocal manifestation of intent to that effect.

Banks *vs.* Yolo County, 104 Cal., 258.
Cooley, Con. Lim., 6th edition, 182.
Malone *vs.* Bosch, 104 Cal., 680.

When two statutes treat of the same subject, one general and the other special, unless they are irrevocably inconsistent, the general law, though later, will not repeal the special. The special law will prevail so far as the subject-matter comes within its provisions.

Bateman *vs.* Colgan, 111 Cal., 581.
Loupe *vs.* Smith, 123 Cal., 491.

The latter case held that:

> "So long as a definite and intelligible scheme is left, deduced by reading the two sections together, one does not efface the other."

The two laws must be so construed as to maintain the integrity of both, and the repugnancy between them should be very clear to sustain a repeal by implication.

People *vs.* Pacific Improvement Co., 130 Cal., 442.

For examples of repeal by implication, see
McDonald *vs.* Dodge, 79 Cal., 112.
Brooks *vs.* Fischer, 79 Cal., 173.

The foregoing discussion, in so far as it bears on the question of the repeal of the veto power of the mayor, applies equally to the act of 1863 and to the franchise act of 1893. But it must be borne in mind that in regarding the ordinance here involved as a contract under the police power,

the act of 1893 must be eliminated as having nothing to do with its passage.

(*b.*) *Considered as a franchise under the act of March 23, 1893 (Stats. Cal. 1893, p. 288), the granting thereof involved the exercise of legislative power by the municipality and required the approval of the mayor.*

In People *vs.* Board of Supervisors of Contra Costa County (improperly entitled "People *vs.* Dean"), 122 Cal., 421–423, the court says:

> "It has been decided by this court that the granting of a franchise was a legislative act. This has been decided in a long, unbroken line of cases, beginning with Chard *vs.* Harrison, 7 Cal., 113, and ending with Quinchard *vs.* Board of Supervisors, 113 Cal., 664."

And again:

> "That such a grant is *essentially* and *entirely* legislative cannot be questioned."

In South Pasadena *vs.* Terminal R'y Co., 109 Cal., 315, it is decided, to quote from the syllabus:

> "The authority of city officers to grant the use of streets for railways is legislative in its nature and is not referable for its support to the power of making contracts."

In Quinchard *vs.* Board of Trustees, 113 Cal., 664–669, it is said:

> "The functions exercised by a municipal corporation may be legislative, administrative, or judicial, but only the acts done by it 'when exercising judicial functions' can be reviewed under this procedure. 'This writ does not lie under the laws to review the action of any tribunal, board or officer in the exercise of functions which are legislative in their character' (People *vs.* Oakland Board of Education, 54

Cal., 375). Whether an existing street shall be improved is a question to be addressed to the governing body of a municipality in its legislative capacity, and its determination upon that question, as well as upon the character of the improvement to be made, is a legislative act (Dillon on Municipal Corporations, secs. 94, 927; Creighton *vs.* Manson, 27 Cal., 613; DeWitt *vs.* Duncan, 46 Cal., 343; Bolton *vs.* Gilleran, 105 Cal., 244; 45 Am. St. Rep., 33). The act does not cease to be legislative because the members of the city council are required to exercise their judgment in determining whether the improvement shall be made. The judgment which they exercise in ordering the improvement is not a determination of the rights of an individual under existing laws, but is the conclusion or opinion which they form in the exercise of the discretionary power that has been intrusted to them, and upon a consideration of the public welfare and demands for which they are to provide. This discretion and opinion is a part of the legislative power that has been conferred upon the city, and is of the same character as that exercised by the legislature itself in providing for the general welfare of the State, and is equally independent of supervision by the judiciary."

It is expressly decided in the following cases that granting franchises involves the exercise of legislative power:

Chard *vs.* Harrison, 7 Cal., 113.

Fall *vs.* Sutter Co., 21 Cal., 236.

California State Tel. Co. *vs.* Atlantic Tel. Co., 22 Cal., 398.

T. & T. T. R. R. Co. *vs.* Campbell, 44 Cal., 89.

San Francisco *vs.* Spring Valley W. W. 48 Cal., 493.

Spring Valley W. W. *vs.* Bryant, 52 Cal., 132.

The granting of a franchise except by legislative action, direct or indirect, would be a legal impossibility, furthermore, any scheme for the granting of a franchise which did not involve

the exercise of legislative discretion of one character or another, would be unconstitutional.

Brandenstein vs. Hoke, 101 Cal., 131, 134.
Moulton vs. Parks, 64 Cal., 166.
People vs. Bennett, 29 Mich., 451.

In sustaining order 2965 as a franchise, under the act of 1893, the circuit court seems to have overlooked the fact that the granting of a franchise involves legislative power and legislative discretion, and seems to have proceeded upon the theory that that act provided a mode or manner of procedure for granting franchises instead of mere conditions on which they might be granted. The court seems to have lost sight of the fact that the legislative body of a municipality might either determine not to grant the franchise or to grant it, and if it determines to grant the franchise it must proceed in the manner peculiar to its charter provisions.

In its opinion upon the motion for a preliminary injunction, the circuit court (Record, pp. 88 to 96) decided that the provision requiring the signature of the mayor did not apply to the franchises granted under the act of 1893. This decision was based upon the authority of People vs. Board of Supervisors, 122 Cal., 421, wherein it was decided that a franchise for a wharf should have been granted in conformity to the act of 1893. *The case cited, however, has no application to the point here involved.* The purpose of the act of 1893 was to simply require all franchises to be sold, and was intended to prohibit their transfer upon gratuity. The very case cited by the circuit court, People vs. Board of Supervisors, 122 Cal., 421, 423, declares that "it has been decided by this court that the grant of a franchise was a legislative act." The franchise act of 1893 provides that "every franchise or privilege * * * proposed to be granted by the board of supervisors, common council or other governing or legislative body * * * shall be granted upon the condition in this act provided, and not otherwise."

Provision is thereupon made requiring the fact to be stated "that an application for such franchise or privilege has been made," and "that it is proposed to grant the same." Thereupon procedure is provided for the opening of bids and the striking off of the franchise to the highest bidder. The point in the procedure where the legislative power of the common council is called into play is when the common council determines to grant a franchise and give notice of the proposed sale. This it must do before the publication occurs, for the publication is required to state "the fact that an application for such franchise or privilege has been made" and that "it is proposed to grant the same."

It is obvious, therefore, that the board is required to determine that it will grant the franchise to the highest bidder. This action is required by the charter of San Francisco to be submitted to the mayor for his approval or rejection. There is therefore no theory upon which it can be decided that the act of 1893, which was intended simply for the purpose of securing the sale of franchises, had the effect of repealing a provision of the municipal charter (that requiring the signature of the mayor) which was intended to safeguard the interests of the municipality and the inhabitants thereof.

It is clear that before the board of supervisors can strike off a franchise to the highest bidder under the act of 1893 they must take preliminary action in determining "that it is proposed to grant the same," and directing publication of notice for bids. The act is silent as to the mode or manner in which this preliminary action shall be taken. The board must therefore proceed in the only mode in which it can proceed in the absence of specific statutory direction, namely, by ordinance under section 68 of the consolidation act. It must be borne in mind that the act of 1893 is a general law, and as such an amendment to the charter of San Francisco and to the charter of every municipality in California. The object of the act was simply to impose the condition that

franchises should thereafter be sold and not granted as a gratuity, and it was wise, therefore, not to interfere with the mode of legislative procedure of most or all of the municipalities in the State, but to leave them to their charter provisions.

We contend that the ordinance required to be adopted by the board of supervisors of San Francisco under the franchise act of 1893, declaring that *they propose to grant the franchise*, and *directing advertisement of such fact and the day on which tenders will be received for the same*, is entirely analogous to the ordinance required under the street improvement law of California as contained in the original consolidation act of 1856 (Stats. of Cal. 1856, p. 156, sec. 40), declaring their intention to do certain work and directing publication thereof for ten days. "The declaration of intention is the fundamental act of the whole proceeding to grade the street," says the supreme court of California in Creighton vs. Manson, 27 Cal., 613–629.

In this case the court held that this must be done by ordinance approved by the mayor, and this was the law until the legislature, in 1862, amended the street law by declaring that the ordinances or resolutions passed under that law (street law of 1862) should not be deemed to be "such ordinances or resolutions as are mentioned in section 68 of the consolidation act (Stats. of Cal. 1862, p. 391, sec. 3).

We submit, therefore, that either as a franchise under the act of 1893 or as a contract under the police power the order of the board of supervisors here involved is void for want of approval by the mayor. *Regarded as a contract under the police power*, the act of 1893 has nothing to do with its passage, and it is void for want of approval by the mayor under section 68 of the consolidation act, because—

(1) it grants a privilege—the exclusive right to cremate all garbage produced in San Francisco;

(2) it imposed a new duty—the duty of every producer of garbage in the municipality to deliver the same to the cre

matory and pay twenty cents per cubic yard for its incineration; and

(3) it imposed a penalty in making the violation of the order a misdemeanor.

Regarded as a franchise under the act of 1893, it is void, because it was not passed as an ordinance or resolution in conformity with section 68 of the consolidation act and did not receive the approval of the mayor.

A case in point is Eisenhuth *vs.* Ackerson, 105 Cal., 87.

This case involved the validity of a street railroad franchise which had been passed by ten members of the board of supervisors of the city and county of San Francisco. The franchise had been vetoed by the mayor, and his veto was subsequently sustained by a new board. The grantee of the franchise claimed that it was valid without the signature of the mayor, but the supreme court of California held that the ordinance was an "ordinance granting a privilege" in the sense of section 68 of the consolidation act and required the approval of the mayor.

The case of Eisenhuth *vs.* Ackerson, we contend, is of controlling force here. The court says:

(Page 92:)

> "The principal point made by counsel for appellant, however, is founded upon section 497 of the Civil Code, under which they say the grant of the franchise in question was made, and which they claim to be so inconsistent with the power of the mayor to veto such grant as to repeal, by implication, that part of section 68 of the consolidation act which authorizes him to veto all ordinances and resolutions of the board providing 'for the granting of any privilege.'
>
> "Section 497 of the Civil Code is the first section of title IV, part IV, division 1, headed, 'Street railroad corporations,' and reads as follows: 'Authority to lay railroad tracks through the streets and public highways of any incorporated city or town may be obtained for a term of years, not exceeding fifty,

from the trustees, council, or other body to whom is intrusted the government of the city or town, under such restrictions and limitations, and upon such terms and payment of license tax, as the city or town authority may provide. In no case must permission be granted to propel cars upon such tracks otherwise than by horses, mules, or by wire ropes running under the streets and moved by stationary steam-engines, unless for special reasons, as hereinafter provided.'

"But we perceive nothing in this section or in title IV at all inconsistent with any part of section 68 of the consolidation act, since neither section 497 nor any other part of title IV purports to provide or regulate the mode or manner in which the 'authority' to lay street railroad tracks in the streets of incorporated cities or towns shall or may be granted by the 'trustees, council, or other body to whom is intrusted the government of the city or town.' *The sole object of title IV was to authorize the governing bodies of incorporated cities and towns to grant the privilege of laying street railroads under such restrictions and limitations as are specified in that title. There was no necessity for providing the mode or manner of the grant, so long as the legislature was content with the modes already provided by the charters of the different cities and towns in the State, although the governing bodies of such cities and towns were differently constituted and governed by charters prescribing different modes of municipal legislation.* Any authorized mode of granting the privilege of constructing and operating street railroads, fully answered all purposes of the Code provisions cited, without requiring all municipalities to grant that privilege in a uniform mode. If, as contended by counsel, section 497 of the Civil Code cannot operate uniformly on all municipal corporations without uniformity in the manner of passing ordinances granting the particular privilege for which it provides, then, indeed, is that section itself unconstitutional, since it fails to provide for such uniformity of manner and leaves it to be governed by the charters of the different municipalities, whose modes of legislation are far from uniform in this respect. But we think that section is not wanting in uniformity of operation on the governing

bodies of all incorporated cities and towns in the State; which governing bodies, however constituted, it authorizes to grant the privilege of constructing street railroads, without prescribing the manner in which the grant shall be made; and it does not purport to have any other operation or effect. For the purposes, and to the full extent of thus authorizing such governing bodies to grant street railroad franchises, section 497 of the Civil Code is a general law, and, by implication, repeals all prior laws inconsistent therewith; but, as above remarked, section 68 of the consolidation act is in no respect inconsistent therewith."

Order No. 12.

In the circuit court of appeals the appellee (respondent here) claimed that order No. 12 (Record, p. 329) operated as confirmation and ratification of order No. 2965, and validated the same.

It is, therefore, advisable that we should state our position with respect to this ordinance, namely, order No. 12. The positions which we take in the matter are three:

(a.) The reference in order No. 12 to order No. 2965 is a mere reference to the latter order as one already passed, and the passage of which is treated as an antecedent act properly done. Consequently the reference would not amount to an enactment of the earlier ordinance.

(b.) Order No. 12 is manifestly dependent upon the supposed existence of order No. 2965. If order 2965 has no existence, order No. 12 falls as being dependent upon a non-existing ordinance.

(c.) Order No. 12 is penal in character. The respondent has no *proprietary* interest therein and is not entitled to enforce its provisions in equity, and, finally, order No. 12 is unilateral and not bilateral in character and created no contractual rights between the municipality and the respondent.

The reference in order No. 12 to order No. 2985 is a mere reference to the latter order as one already passed, and the passage of which is treated as an antecedent act properly done, consequently the reference would not amount to an enactment of the earlier ordinance.

It is the established law of California that if a later ordinance incorrectly recites the existence and passage of a prior ordinance, that the later ordinance will not have the effect of giving validity to the earlier ordinance.

This question arose in 1857. December 5, 1853, ordinance No. 481 of the city of San Francisco was passed to provide for the sale of certain city property. It turned out, however, that ordinance No. 481 did not receive the necessary votes, and while it was generally believed to have been passed, in point of law it had not been passed at all. December 26, 1853, was the day for the sale of the lots under ordinance No. 481. On that day and about an hour before the sale occurred ordinance No. 493 was duly and regularly enacted. The last mentioned ordinance referred to ordinance No. 481 and to the proposed sale which was to occur thereunder and appropriated the proceeds of said sale to certain municipal purposes. Holland, the plaintiff in Holland *vs.* San Francisco, 7 Cal., 384, brought an action against the municipality to recover the money she had paid to it on account of real estate purchased by her. In that case it was decided that ordinance No. 493 was a sufficient recognition of ordinance No. 481 to render the sale valid and binding. From this decision Chief Justice Murray dissented.

The case of Holland *vs.* San Francisco, however, was expressly overruled in McCracken *vs.* San Francisco, 16 Cal. 621.

The doctrine announced in McCracken *vs.* San Francisco was upheld and followed in later decisions.

Grogan *vs.* San Francisco, 18 Cal., 610.
Pimental *vs.* San Francisco, 21 Cal., 353.
Herzo *vs.* San Francisco, 33 Cal., 134.

IV.

CONSIDERED AS A FRANCHISE, THE ORDINANCE IS INVALID FOR WANT OF POWER TO GRANT THE FRANCHISE AND FOR A VIOLATION OF THE PRESCRIBED MODE IN THE GRANTING THEREOF, IF THERE WERE POWER TO GRANT THE SAME.

(*a.*) There is no law of California under which the ordinance here involved, considered as a franchise, could have been lawfully granted. The ordinance itself purports to have been granted solely under the authority contained in the franchise act of 1893 (Stats. Cal. 1893, p. 298) hereinabove set out in full.

The act of 1893 does not pretend to authorize the granting of franchises. Its obvious purpose is to put a limitation upon the exercise of power to grant franchises conferred by other acts. The language is that "every franchise * * * hereafter proposed to be granted * * * shall be granted upon the conditions in this act provided, and not otherwise." The conditions provided in the act are those of purchase and sale. In other words, no franchise can be voted as a gratuity. It must be sold, and sold to the highest bidder. The plain object of this statute was to limit the exercise of authority to grant franchises conferred by other acts of the legislature. It was never intended to be itself a grant of authority to vote franchises. It was an act limiting power conferred by other legislation.

It is therefore clear that, considered as a franchise, there is no authority whatever for the passage of the ordinance here involved.

(*b.*) Assuming, however, that the act of 1893 does authorize the granting of such a franchise, there is no provision therein, nor is there any provision elsewhere to be found, which authorizes the granting of an *exclusive* franchise. It

is clear that authority to grant a franchise never carries with it power to grant an exclusive franchise.

Minturn *vs.* La Rue, 23 How., U. S., 435.

Citizens' Street Railway *vs.* Detroit Railway, 171 U. S., 48.

(c.) The grant of the franchise was invalid for the reason that it was not sold to the highest bidder, as required by the act of March 23, 1893. Merle bid $5,500 (Respondent's Ex's 5 and 30, Record, p. 350). Sharon bid $2,510 and a percentage of the gross receipts (Respondent's Ex's 6 and 29, Record, p. 352). Merle was the highest cash bidder. The board of supervisors awarded the franchise to Sharon on the theory that his bid of a percentage of the gross receipts made him the highest bidder. This award was made February 17, 1896. A month later, March 17, 1896, the supreme court of California decided (Thompson *vs.* Board of Supervisors, 111 Cal., 553) that percentage bids were invalid, and that the statute required the award to be made to the highest cash bidder. The award to Sharon was therefore void. Mode is the measure of power (Pacific Electric Company *vs.* The City of Los Angeles, 118 Fed., 746, 753, affirmed in this court April 11, 1904).

It is also clear that this point is open to us, for it is said in City of Zanesville *vs.* Zanesville Gas Light Company, 47 Ohio, 1; 23 N. E., 25, to quote from the syllabus:

> "*Wherever an incorporated company in any action asserts a right against another person, based upon an assumed franchise or power, the person against whom the right is so asserted may, as a defense, deny the existence of such franchise or power.*"

This same rule is laid down in Thompson on Corporations, sections 5340.

In Waterloo Turnpike Road Co. *vs.* Cole, 51 Cal., 386, it is said:

"But in the case at bar the point raised by the defendant is, that it affirmatively appears, from the plaintiff's evidence, that the board did not acquire jurisdiction to grant the franchise to collect tolls because of its failure to prescribe the location of gates, which was a condition precedent to the exercise of the power to grant the franchise. In other words, the proposition is, that the grant is void for want of jurisdiction in the board to make it, and not merely that the board erred in the exercise of its admitted jurisdiction. The distinction between the two cases is obvious; and it is too clear to require argument, that when the want of jurisdiction appears upon the face of the proceedings, as in this case, any one injuriously affected may avail himself of the defect, even in a collateral action."

We therefore submit that, whether it be considered as a contract under the police power or as the grant of a franchise, the ordinance here involved never had any legal existence, for the reason that it was never lawfully enacted.

V.

SOCIALISM HAS NOT BECOME SO DOMINANT A PRINCIPLE IN THE POLICE POWER THAT THE STATE CAN ASSUME OR FARM OUT A MONOPOLY OF ALL OF THE OCCUPATIONS SUBJECT TO REGULATION UNDER THE POLICE POWER.

In Iler *vs.* Ross (Neb.), 90 N. W., 961; 57 L. R. A., 895, it is decided that "scavenger work has a well accepted and defined meaning, and the occupation or business, lowly though it be, has existed and has been recognized and regulated for ages."

The proposition upon which this case was sustained in the circuit court of appeals is that the State may assume a monopoly of the occupation of collecting and destroying

house refuse, and may, therefore, farm out that monopoly to "an agent of the State." This is laid down with respect to a calling which, though lowly, is an incident to civilized life in all large cities—to a calling which engages the activities and brings a livelihood to great numbers of persons. The calling is on a plane with tanning, carpet-beating, the manufacture of soap, laundering, and other similar occupations. If the State (or a political subdivision) can assume or farm out a monopoly of the occupation of collecting and destroying refuse, upon what theory can it be denied the right to assume or farm out a monopoly of tanning, manufacturing soap, carpet-beating, laundering, and other similar occupations?

Is it possible that the police power of the State has grown so great that it now embraces authority to accomplish all these results?

We claim not.

In Lawton *vs.* Steele, 152 U. S., 133, it is decided that to justify the exercise of the police power the public interest must require the interference, and *the measures adopted must be reasonably necessary for the accomplishment of the* purpose.

In Allgeyer *vs.* Louisiana, 165 U. S., 578–589, it is held that "the right to follow any of the common occupations of life is an inalienable right."

The ordinance here involved violates, so we claim, the principles laid down in the cases cited.

We know of no case decided by this court where the authority of a State to assume or farm out a monopoly of a calling confessedly subject to police regulation has ever been considered. The case at bar sustains the exercise of such power by a municipality which has been granted no special powers upon these subjects. The decision of the circuit court of appeals therefore practically establishes that such a power exists in every municipality of the country.

Whether such an application of the police power shall

become imbedded in the jurisprudence of the country is in the hands of this court.

Respectfully submitted.

GARRET W. MCENERNEY,
R. T. HARDING,
Of Counsel for Petitioners.

CHARLES PAGE,
EDWARD J. MCCUTCHEN,
GARRET W. MCENERNEY,
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APPENDIX.

Order No. 2965.

Granting to F. E. Sharon, his associates and assigns, the sole right and privilege to cremate garbage, house refuse, dead animals and putrid vegetable matter and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same, or a portion thereof, into fertilizing matter and other substances, free of all cost or charge to said city and county, and making certain violations of this order misdemeanors.

Whereas, the disposal of house refuse, butchers' offal, garbage, putrid or stinking animal or vegetable matter, refuse, ashes, or other like matter, by cremation, or by some process of chemical reduction, is the only effective means to dispose of the same to prevent the said matter and material from being deposited in or upon lots, lands and public streets situate in the city and county or in the waters of the bay, as heretofore, to the prejudice of the public health; and

Whereas, under the provisions of an act of the legislature entitled "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of

franchises" (approved March 23, 1893), bids for a franchise were duly called for; and

Whereas, F. E. Sharon was the highest and best bidder for the said franchise, as hereinafter recited, and all the forms and requirements of law necessary thereto being complied with; now, therefore,

The people of the city and county of San Francisco do ordain as follows:

In consideration of the sum of twenty-five hundred and ten dollars, the receipt of which is hereby acknowledged, and in consideration of the further payment of two per centum for the term of fifteen years from and after the date of this franchise, and the payment of five per centum for the remaining term of thirty-five years, on the gross amount of the receipts to be derived by the said F. E. Sharon, his associates or assigns, under this franchise, to be paid into the treasury of the city and county of San Francisco each and every year during the continuance of this franchise, the franchise hereinafter recited is hereby granted to F. E. Sharon, his associates and assigns.

SECTION 1. The sole and exclusive right and privilege is hereby conferred upon and granted to F. E. Sharon, his associates and assigns, for a term of fifty years from and after the approval of this order, to cremate and destroy within the city and county aforesaid, by crematories or by a process of reduction, house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted), and putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and the said grantees, their associates and assigns, shall have the right and privilege to charge and collect therefor not exceeding the sum of twenty cents per load such load not to exceed a cubic yard, on the delivery of the above material or substances at the plant or works where the crematory or reduction plant is established.

SECTION 2. The grantees, their associates and assigns, shall within a period of twenty-four (24) months after the granting of this franchise, unless the time is extended therefor by this board, have fully erected and constructed and in operation a suitable building or buildings, and equip, fit up and install the same with the necessary crematories machinery,

tools and appliances required to cremate and destroy by cremation, or by a process of reduction, all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, and any dead animal and putrid vegetable matter, and fish, flesh and food condemned by the board of health as unfit for human food, the works to be constructed to cremate or reduce at least three hundred tons per day of the materials specified in this section, and the capacity to be increased as required from time to time.

SECTION 3. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to remove through the public streets from any houses, hotels, markets, hospitals, factories, restaurants, stores or any other like building or place in the city and county, any refuse, butchers' offal, garbage, dirt, ashes, cinders, sludge, crockery, tins, bones or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food condemned by the board of health as unfit for human food, or dead animals whose removal is not otherwise provided for by contract or franchise heretofore granted, unless the same shall be removed through said public streets in closed vehicles and wagons constructed so as to conceal the contents from public view, and to effectually prevent any smell escaping therefrom, as well as to prevent the droppings of any portion of such material or substances on or upon the public streets, and which said vehicles and wagons shall be constructed in accordance with specifications approved by the board of health of said city and county.

SECTION 4. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to dump or place upon any land within said city and county, or in any water or waterways within said city and county, any refuse, butchers' offal, garbage or other material mentioned in section 3 of this order, but such refuse, butchers' offal, garbage and other material shall be forthwith delivered to the crematory herein provided for, and there, at the expense of the person or corporation so conveying the same, be cremated or destroyed, or subjected to such disposition and treatment as will at once secure and effect a complete combustion of all gases and odors arising therefrom.

SECTION 5. The said grantees, their associates and assigns, on receipt of any of the material or substances specified in this order, shall within twenty-four (24) hours thereafter cremate or reduce the same, or shall subject the same to such process as will secure the complete combustion of all gases or odors arising therefrom. The said grantees, their associates and assigns, shall maintain and operate their plant and crematory or crematories, or other apparatus, and the matter and substances received, so as to prevent any obnoxious smells or gases being emitted either from the deposit of such matter or substances on their premises, or from the process of cremation or other treatment thereof, or from the residuum remaining after cremation or treatment as aforesaid; also, that in the operation of said works no smoke or soot shall be emitted so as to constitute a nuisance.

SECTION 6. The said grantees, their associates and assigns, shall from and after the first day of December, 1902, have the sole and exclusive right and privilege during the continuance of the remainder of the term of this franchise to remove and dispose of the carcasses of all dogs killed at the public pound, and all animals impounded and not redeemed by the owners thereof, and which are valueless and cannot be sold; also, to remove and dispose of the carcasses of all dead animals found upon the public streets, and the carcasses of all dead animals in said city and county not slain for human food, which shall not be removed and disposed of by the owners thereof so as not to become a nuisance within six hours after the death of the same; provided that in the event the parties now holding and exercising this privilege of removing the dead animals not slain for human food should hereafter fail or refuse to remove the dead animals and should forfeit their contract with said city and county, then immediately upon such forfeiture the right to remove said dead animals shall vest in the grantees herein, their associates and assigns under this order.

SECTION 7. This board will pass such orders as may be required from time to time to enable the said grantees, their associates and assigns, to enjoy and have the benefit of all the rights and privileges herein granted, and on the completion of the work will pass such other and additional orders as will enable the said grantees, their associates and assigns, to carry out the contemplated destruction of garbage, offal, house refuse and material mentioned in this order and

the conversion of the substances herein named for fertilizing and other purposes, and for the segregation prior to delivery of garbage and offal from ashes and other refuse.

SECTION 8. The said grantees, their associates and assigns, shall at all times be subject to and conform to all health and sanitary regulations and requirements enacted and in force during the existence of this franchise. The said grantees, their associates and assigns shall receive no compensation whatever from the city and county for any service performed under the conditions of this order in disposing of the material and substances specified in this order.

SECTION 9. This franchise shall cease and determine upon the failure of the grantees, their associates and assigns, to fully carry out and faithfully perform the obligations herein imposed, unless from unavoidable cause beyond the control or power of the grantees, their associates and assigns, by reason of any fire or other casualty, the operations and works shall be destroyed or temporarily suspended in their operation. The said grantees, their associates and assigns, in the event of an accident to or destruction of their works, shall, during the time such works cannot be operated, and until said works are repaired or reconstructed, and within such reasonable time as may be allowed and approved by this board, deodorize the material and substances specified in this order and dispose of the same as directed by this board, so as to prevent all noxious gases or odors escaping therefrom, until the said material or substances are cremated or utilized as provided by this order.

SECTION 10. All of the machinery and appliances used shall be of California manufacture, except such as are manufactured exclusively or patented in the eastern States or abroad.

SECTION 11. The said grantees, their associates and assigns, shall, within a period of ten days from the date of the approval of this order, file with the clerk of this board their acceptance of its provisions and of this franchise.

SECTION 12. Any violation of the provisions of sections 3 and 4 of this order shall be and are hereby declared to be a misdemeanor, and punishable as such.

SECTION 13. This order shall take effect and be in force on and from its passage.

All orders or parts of orders in conflict with the provisions of this order are hereby repealed and made null and void.

And the clerk is hereby directed to advertise this order as required by law.

In board of supervisors, San Francisco, February 17, 1868.
Adopted by the following vote:
Ayes—Supervisors King, Scully, Hirsch, Dimond, Taylor, Morganstern, Spreckels, Hobbs.
Noes—Supervisors Benjamin, Hughes, Dunker, Wagner.

JNO. A. RUSSELL, *Clerk.*

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Supreme Court U. S.
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OCT 16 1905
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 25.

THE CALIFORNIA REDUCTION COMPANY ET AL.,
PETITIONERS,

vs.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR RESPONDENT.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905

No. 254.

THE CALIFORNIA REDUCTION COMPANY ET AL.,
PETITIONERS,

v.

THE SANITARY REDUCTION WORKS OF SAN FRANCISCO, RESPONDENT.

BRIEF FOR RESPONDENT.

Statement of the Case.

On November 18, 1895, the board of supervisors of the city and county of San Francisco adopted a resolution directing the clerk of said board "to advertise for proposals for the sale of a franchise conferring the right and sole privilege to cremate garbage and house refuse or to dispose of the same by some process equally effective and unobjectionable, free of all cost or charge to the city and county," as specified in the provisions of a proposed order to accompany such advertisement (Rec., p. 309). The board assumed to take this action in accordance with the terms of an act of the legislature of California "relative to granting of franchises," ap-

proved March 23, 1893 (Stats. Cal. 1893, p. 288). In answer to the advertisement, three proposals were received, and on January 6, 1896, were opened by the board and referred to the committee on health and police.

In due course the committee reported, and on February 17, 1896, an order, No. 2965, was passed by the board awarding the aforesaid privilege to one F. E. Sharon, which order is found in full in Appendix "A" to this brief. The validity of this award was contested by one L. V. Merle, who claimed to have been the best and highest bidder for the privilege; but the superior court of the city and county of San Francisco upheld the award to Sharon, and from this decision no appeal was taken (Rec., pp. 367, 368).

The SANITARY REDUCTION WORKS OF SAN FRANCISCO, respondent herein, succeeded to the interest and rights of F. E. Sharon, the grantee of such franchise, and proceeded to erect works in conformity with its terms, at an expense of about $180,000, and notified the board of supervisors of their completion. Thereupon the board passed another order, No. 12 (second series). This order, after reciting the objectionable dumping of garbage and other refuse substances which for twenty years hitherto had prevailed, and the steps taken and efforts made to abate such nuisance, and also the completion by respondent of its works, and its readiness to receive, cremate, and destroy all such substances in accordance with the terms and under the conditions of the franchise granted by said order No. 2965, forbade the dumping or depositing after a certain date of such substances, "upon any street, lot or lands, within said city and county, or in any water or waterways within said city and county," and required the delivery of all such substances at and to the crematory of the Sanitary Reduction Works, "there at the expense of the person, company, or corporation so conveying the same" to be "cremated and destroyed or subjected to such disposition and treatment as will secure and effect a complete combustion of all gases and odors arising there-

from, as provided in the franchise aforesaid." A penalty for any violation of the provisions of the order is added, and it is made the duty of the board of health to aid in the enforcement of the order. This order was approved by Mayor James D. Phelan on November 4, 1897, and is found in full in Appendix "B" to this brief. It was shown in evidence in the circuit court that two payments had been made by the sanitary reduction works on account of the 2 per cent. of gross receipts agreed to be paid to the city and county of San Francisco, the sum of $140.21 for the period from November 1, 1897, to December 31, 1897, and the sum of $931.68 for the year ending December 31, 1898 (Rec., pp. 15, 114, 332). These sums were accepted by resolution of the board of supervisors and cover the entire period up to the commencement of proceedings in the circuit court (Rec., p. 332).

On November 22, 1898, one of the petitioners herein, THE CALIFORNIA REDUCTION COMPANY, a corporation which had been incorporated under the laws of the State of Colorado about three months before for the purpose of gathering garbage in the city and county of San Francisco and of removing it therefrom to an adjoining county, entered into an agreement with over a hundred scavengers of the said city and county under which these latter agreed, among other things, to bring and deliver to said corporation at the place or places designated by it in San Francisco such of the various refuse substances covered by the aforesaid orders, Nos. 2965 and 12 (second series), as they should gather, and to pay to it a slightly less sum per cubic yard than the maximum allowed in the first of said orders (Rec., pp. 100, 110, 333). Several provisions favorable to the scavengers were inserted in the agreement, a significant one being to protect them from all arrests and to pay all expenses for defending any of them who might be arrested by reason of their delivering to said corporation any of the articles therein named. In order further to carry out its purposes the California Reduction Company leased two barges and made other arrangements to transport

by water to San Mateo county the garbage and refuse matter which should be delivered to it in San Francisco under such agreement or otherwise. The California Reduction Company, as well as the individual petitioners associated with it in these proceedings, claimed the right to convey, deliver, and deposit within the city and county of San Francisco the various refuse substances particularly set forth in the two orders hereinabove mentioned, contrary to and in violation of their plain terms and provisions.

To put an end to these acts and practices on the part of petitioners and to enforce its rights under the said orders, the Sanitary Reduction Works of San Francisco on December 19, 1898, brought a suit in equity asking for a perpetual injunction to prevent the California Reduction Company and about 140 scavengers in San Francisco, who were still subjects of the King of Italy, from removing the refuse substances and materials specified in said orders and to restrain them from any further infringement upon its exclusive rights and privileges thereunder. A preliminary injunction was issued by the circuit court in accordance with the prayer of the bill of complaint (Rec., pp. 88 to 96), and after the taking of voluminous testimony a final decree was entered on January 7, 1902, perpetually enjoining and restraining the petitioners herein and all of them "from directly or indirectly removing from the city and county of San Francisco, State of California, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones, and other like matter, dead animals, putrid vegetable matter, or such fish, flesh, or food as may be condemned by the board of health of said city and county, as unfit for human food, as specified in order No. 2965 or in order No. 12 (second series) of the board of supervisors of the said city and county of San Francisco, State of California, set forth in the bill of complaint herein, and from depositing or dumping at any other place in said city and county of San Francisco save and except at the works, buildings, and crematories of the complainant herein, in said city and

county of San Francisco, any of the house refuse or other materials hereinbefore described during the life and term of the contract and franchise belonging to the complainant as alleged in the bill of complaint herein, and from obstructing, hindering, or in any way interfering with said complainant in the delivery of it or in the incineration and cremation by it of any of the house refuse or other materials mentioned and described in said orders and ordinances and in the bill of complaint herein, and from diverting from the complainant any of said house refuse or other materials, and from infringing in any manner upon the rights, privileges, or franchises secured to said complainant by the aforesaid orders or ordinances, and from interfering with said complainant in the performance of any of its duties under said orders or ordinances" (Rec., pp. 85, 86). From this decree an appeal was taken to the circuit court of appeals for the ninth circuit, with the result that it was unanimously affirmed on October 3, 1903, *California Reduction Co. et al. vs. Sanitary Reduction Works of San Francisco*, 126 Fed. Rep., 29 (Rec., p. 409). The jurisdiction of the circuit court rested on diverse citizenship alone. Under well-known authorities the decision of the circuit court of appeals would therefore have been a final disposition of the case had not a writ of certiorari been granted by this court on May 31, 1904.

Colorado Central Mining Co. v. Turck, 150 U. S., 138.
Press Publishing Company v. Monroe, 164 U. S., 105.
Spencer v. Duplan Silk Co., 191 U. S., 526, and numerous other cases.
See also *Forsythe v. Hammond*, 166 U. S., 506.

To the brief filed in support of the application for this writ no reply was made, and in its absence many facts were not brought to the attention of this court which will appear herein, and a consideration of which will clearly show that the decision of the circuit court of appeals was correct, and that it is supported by a long and unbroken line of authorities in various appellate courts of the United States.

ARGUMENT.

Order No. 2965 and order No. 12 (second series) are both valid under the police power vested in the city and county of San Francisco.

In the *Slaughter House Cases*, 16 Wall., 36, 62, this court, after quoting the famous expression of Chief Justice Shaw regarding the police power, that "it is much easier to perceive and realize the existence and sources of it than to mark its boundaries, or prescribe limits to its exercise," said that—

> "This power is, and must be from its very nature incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. 'It extends,' says another eminent judge [Redfield] 'to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State, * * * and persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State.' Of the perfect right of the legislature to do this no question ever was, or, upon acknowledged general principles, ever can be made, as far as natural persons are concerned."

This power is held, in *Hannibal & St. J. R. Co. v. Husen*, 95 U. S., 465, to include generally the making of all "regulations promotive of domestic order, morals, health and safety." In *Lawton v. Steele*, 152 U. S., 133, 136, the police power, according to this court, "is universally conceded to include everything essential to the public safety, health and morals, and to justify the destruction or abatement, by sum-

mary proceedings, of whatever may be regarded as a public nuisance."

After citing numerous particular examples of its proper exercise, the court continues:

> "Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."

A recent opinion, called forth by a case (*Dupont v. District of Columbia*, 20 App. Cas. D. C., 477, 487) very similar to the one now before this court, contains the following comprehensive statement:

> "The police power is the emanation of that inborn principle of human nature which led men into society and created the body politic to which sovereignty pertains for the purpose of securing safety, order and the commonweal. To effect these ends, the Government is invested with the power to make reasonable regulations restrictive of individual impulse. As population increases, in rapid proportion, new physical conditions are developed which suggest, as reasonable, regulations and restraints of persons and property before unknown. As civilization advances with increased and deeper knowledge, science makes new discoveries in respect to the dissemination of disease through infection which necessitate radical changes in methods for the protection of human life."

In his work on Municipal Corporations, section 141, Judge Dillon, speaking of police and sanitary regulations, says:

> "It is well settled that laws and regulations of this character, though they may disturb the enjoyment of individual rights are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If he suffers injury, it is either *damnum*

absque injuria or, in the theory of the law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure."

See—

Harrington v. City of Providence, 20 R. I., 235.
Ex parte Tuttle, 91 Cal., 589.
Ex parte Lacey, 108 Cal., 326.
Tenement House Department of the City of New York v. Moeschen (1904, N. Y.), 72 N. E. Rep., 231.

In the city and county of San Francisco the board of supervisors was, and is, the body or board which formed the legislative department of the government of that municipality.

McDonald v. Dodge (1893), 97 Cal., 112, 114.
Harrison v. Roberts (1904), 78 Pac. Rep., 537, 540.

And as such was entrusted with the exercise of the police power therein.

The constitution of California (article XI, sec. 11) provides that:

> "Any county, city, town or township may make and enforce within its limits, all such local, police, sanitary and other regulations, as are not in conflict with general laws."

The legislature of the State, by an act approved April 25, 1863, and in force at the time the orders in question were passed, provided, among other things, that:

> "The board of supervisors of the city and county of San Francisco shall have power, by regulation or order, * * * 2d. To authorize and direct the summary abatement of nuisances; to make all regulations which may be necessary or expedient for the preservation of the public health and the prevention of contagious diseases; to provide by regulation for the prevention and summary removal of all nuisances and obstructions in the streets, alleys, highways, and

> public grounds of said city and county, and to prevent or regulate the running at large of dogs, and to authorize the destruction of the same when at large contrary to ordinance." Stats. 1863, p. 540, c. 352.

Commenting upon this section of said act in *Ex parte Schrader*, 33 Cal., 279, 281, the supreme court of California says:

> "It is apparent that the legislature could confer power upon the board to pass the order [upheld in that case] if it could have enacted it directly in the form of a statute in the first instance."

There can certainly be no question that the police power of the State may be delegated to a city, so far as it is necessary to protect the health of its inhabitants.

See *City of Norfolk v. Flynn* (1903), 101 Va., 473; 99 Am. St. Rep., 918.

The true character of the orders now under consideration, and their propriety and clear validity under the police power vested in the city and county of San Francisco will become manifest upon closer examination of their provisions. Both orders recite the objectionable practice which had hitherto prevailed of depositing and dumping the refuse substances upon the "lots, lands and public streets situate in the city and county and in the waters of the bay, to the prejudice of the public health." The board of health had from time to time "called attention to and condemned the disposition of such garbage and refuse matter in the filling of lots," and had "repeatedly urged the cremation of such substances to protect the public health." That this practice had become a nuisance is shown not only by these recitals but by the testimony introduced on the hearing. (See John Center's testimony, Rec., p. 280.) The board of supervisors came to the conclusion that the only effective means to dispose of such "garbage, house refuse, dead animals and putrid vegetable

matter and material of a like character" was to cremate it, or dispose of it by some process of chemical reduction. After calling for bids, they accordingly granted to one F. E. Sharon, whom they declared the highest and best bidder, his associates and assigns, for a period of fifty years, the sole and exclusive right and privilege "to cremate and destroy within the city and county aforesaid, by crematories or by a process of reduction, house refuse, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted,) and putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food."

It will be observed that the privilege relates only to such dead animals as are not otherwise provided for by contract or franchise heretofore granted, but that after the expiration of such contract or franchise, to wit, from and after the 1st day of December, 1902, the said Sharon and his associates and assigns are given by section 6 of order No. 2965 the sole and exclusive right and privilege during the remainder of the term of their franchise to remove and dispose of the carcasses of dead animals. Care is taken, however, not to violate any of those property rights upon which counsel so earnestly and emphatically dwelt in his brief in behalf of petitioners for the writ of certiorari herein, by giving the grantee of the franchise the right to remove and to dispose of the carcasses of only such "dead animals found upon the public streets" or "in said city and county" of San Francisco "not slain for human food" as "*shall not be removed and disposed of by the owners thereof so as not to become a nuisance within six hours after the death of the same.*" For this franchise the said F. E. Sharon paid to the city and county of San Francisco the sum of $2,510, agreed to pay 2 per cent. of the gross receipts derived under it for the term of fifteen years from and after its date, and 5 per cent. of such gross receipts for the remaining thirty-five years thereof, and further

promised to construct and have in operation within 24 months a suitable building or buildings equipped and fitted up "with the necessary crematories, machinery, tools and appliances required to cremate and destroy by cremation, or by a process of reduction, all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, and any dead animal and putrid vegetable matter, and fish, flesh and food condemned by the board of health as unfit for human food, the works to be constructed to cremate or reduce at least 300 tons per day of the materials specified in this section, and the capacity to be increased as required from time to time." The said grantee of the franchise, his associates and assigns, were given the "right and privilege to charge and collect" for such cremation "not exceeding the sum of 20 cents per load, such load not to exceed a cubic yard," on delivery at the crematory.

The Sanitary Reduction Works of San Francisco, the assignee and successor in interest of said F. E. Sharon, completed the work and complied with the terms and conditions of the franchise conferred by order No. 2965, whereupon the board of supervisors of the city and county of San Francisco duly passed order No. 12 (second series) confirming order No. 2965, providing in section 1 as follows:

> "SECTION 1. No person, company or corporation shall on and after the 8th day of November, 1897, deposit, dump or cause to be dumped or deposited upon any street, lot or lands within said city and county or in any water or waterways within said city and county, or from any wharf or bulkhead on the water front of said city and county, except as hereinafter provided, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, broken glass, crockery, tins, bones, rubbish or other like matter, or any dead animals (not otherwise provided for by contract or franchise heretofore granted by the city and county), or putrid or stinking animal or vegeta-

ble matter or fish, flesh and food condemned by the board of health, as unfit for human food.

All such refuse, butchers' offal, garbage, ashes, cinders, sludge, acids or other like substances or matter hereinbefore enumerated shall be delivered at and to the crematory of the Sanitary Reduction Works on the block bounded by Rhode Island, Alameda, De Haro and Fifteenth streets, in said city and county, and there at the expense of the person, company or corporation so conveying the same, be cremated and destroyed or subjected to such disposition and treatment as will secure and effect a complete combustion of all gases and odors arising therefrom as provided in the franchise aforesaid."

Special attention is called to the fact that under neither of these orders is the householder prohibited from destroying his garbage on his own premises if he can do so without causing a nuisance; also to the fact that no interference is designed or attempted with the "lowly calling" of scavengers, for, as pointed out by the circuit court of appeals, they are not deprived of the right to collect the garbage. They are only prevented from disposing of the garbage in any other way than by delivering it at the crematory erected by the Sanitary Reduction Works, there to be cremated and destroyed. These facts are important as justifying the assertion, which we are now prepared to make, that no reported case has questioned the validity of any ordinance or contract containing provisions similar to those in the San Francisco orders now under consideration.

The most extreme case which can be cited against the validity of the orders here called in question is that of *Iler v. Ross*, 64 Neb., 710; 90 N. W. Rep., 961; 57 L. R. A., 895. In this case an ordinance "regulating the collection and removal of dead animals, garbage, manure, ashes, filth, offal, night soil, and other refuse matter" was declared invalid on the ground that it was of too sweeping a character and "an invasion of the natural rights of the inhabitants of the city."

The principles laid down in the opinion, however, warrant the belief that the court would not have considered the San Francisco orders objectionable. The court says (p. 723):

> "There can be, in the nature of things, no reasonable necessity for the city to gather and remove from the private premises of the inhabitants the accumulations of rubbish and waste materials which are not in themselves, and when not allowed to accumulate in unreasonable quantities, nuisances. How can it be said that a necessity exists, in order to protect the public health, to enter private grounds and remove therefrom the refuse of the barn, ashes from the yard, and other material not offensive in itself, if not permitted to accumulate in large quantities and for an unreasonable length of time? By what process of reasoning can it be said that the owner may be deprived of the right to keep his premises neat and clean and remove all such material as rapidly as it may accumulate in such quantities as to warrant its disposition, and under such reasonable regulation as to the method of removal as may be imposed by the authority of the city? Why and for what reason must he engage only the city contractor to perform such services?"

While the principles announced in this case are extreme and not in harmony with the great weight of authority, as will hereafter be shown, still the San Francisco orders are in no respect open to the objections advanced by the court therein. No privilege of collecting the refuse substances has been given by these orders, and no right to enter private premises has been claimed under them. The Nebraska case expressly asserts that "the right of reasonable regulation for the prevention of nuisances of every kind, and the method of removal through and over the streets of a city of all accumulations of refuse matter, rubbish and other waste material for the purpose of sanitation, and in the interest of the general health and comfort of the inhabitants should be and is fully recognized," and that "as to those substances which

are in themselves nuisances, and for the protection of the public, require speedy and prompt abatement and removal by the city, or some one by it authorized to perform the work, the exercise of the power is in its nature a public function, to be engaged in by the city in its own behalf, or by the employment of such agencies as will best accomplish the desired result, and that regarding such matters the granting of an exclusive privilege by the city to one individual for the removal of such unwholesome substances is not an unlawful exercise of power, nor does it conflict with the principle of law opposed to the creation of monopolies or an invasion of personal rights."

The court gives its entire approval to the earlier case of *Smiley v. McDonald*, 42 Neb., 5; 60 N. W. Rep., 355; 27 L. R. A., 540; 47 Am. St. Rep., 664.

In *Smiley v. McDonald* the city of Omaha gave to the contractor for a small annual payment the right for a period of ten years "to remove and make use of all the dead animals, garbage, offal, night soil, etc., necessary to be removed, as may be required by the board of health or ordinances of said city of Omaha," the contractor agreeing on his part, in accordance with the ordinances, "to remove to some place or places at least two and a half miles outside of the corporate limits of said city, and if within three miles of the corporate limits of said city, to such place or places as may be designated by such board of health, and dispose of the same in such manner as not to cause or create a nuisance, all dead animals, garbage, manure, ashes, filth, offal, night soil, etc., as may now or hereafter during the existence of this contract be required to be removed by said ordinances, rules or regulations." A limit was placed upon the prices to be charged by the contractor, varying in amount according to the object removed. In upholding the contract the court says (42 Neb., 13):

> "But the removal of the noxious and unwholesome matter mentioned in the contract tends directly to

promote the public health, comfort and welfare, and is therefore a proper exercise of the police power. Nor is the fact that in this instance the city has by contract conferred an exclusive privilege material. From the power thus conferred upon the city is implied the duty to determine the means and agencies best adapted to the end in view. The means adopted appear to be not only a reasonable and necessary regulation, but a judicious exercise of the discretion conferred upon the city.

"That the object of all such regulations can be best attained by entrusting the work in hand to a responsible contractor who possesses the facilities for carrying it on with dispatch, and with the least possible inconvenience to the public, is apparent to all. In the case of *Vandine, petitioner*, 6 Pick., 187; 17 Am. Dec., 351, Putnam, J., referring to a similar regulation of the city of Boston, said: 'It seems to us the city authorities have judged well in the matter. They prefer to employ men over whom they have an entire control by night and by day, whose services may be always had, and who will be able from habit to do the work in the best possible way and time. Practically, we think the main object of city government will be better accomplished by the arrangement adopted, than by relying upon the labor of others over whom the government would have no other remedy than a suit for breach of contract. * * * We are satisfied that the law is reasonable and not only within the power of the government to prescribe, but well adapted to preserve the health of the city.'"

After citing many cases, the opinion concludes (p. 14):

"The alleged excess of power is a mere sanitary measure, as obviously so as the familiar and necessary quarantine for the detention of persons exposed to contagious diseases. In either case the privilege, although exclusive, is but an incident to the proper exercise of the general police power of the State."

In *Iler v. Ross* no attempt was made to overrule the case of *Coombs v. McDonald*, 43 Neb., 632; 62 N. W. Rep., 41, wherein

an ordinance was held valid against the claim that it was contrary to public policy to grant an exclusive privilege.

In the brief filed by the petitioners in applying to this court for a writ of certiorari several cases which may be called "dead-animal cases" were cited, which really have no important bearing upon the case in hand for the clear reason already pointed out that the defect which rendered invalid the ordinances passed upon in those cases was entirely absent in the San Francisco orders, and that these latter afforded ample time to the owner to remove his property, and thus prevent its becoming a nuisance. So much stress, however, was laid on these cases in the brief that it is proper to devote some space to them here.

In *Knauer v. City of Louisville*, 20 Ky. Law Rep., 193; 45 S. W. Rep., 510, the ordinance gave to the public contractor the exclusive privilege to remove out of the city of Louisville the carcasses of dead animals not slain for food or to be used in useful arts. The owner could direct the place to which they should be removed, but only upon paying such fees to the public contractor for their removal as practically left the owner no balance. The court say (p. 511):

> "The sole question in this case is whether the city can pass an ordinance which fixes the fees to be paid the public contractor for the removal of the carcass of a dead animal out of the city at such sums that their owners cannot pay them and realize anything out of them. Can the city in this indirect way confiscate the property of its owner and give it to the public contractor?"

It was shown that many animals died on the cars while being shipped, that they did not immediately become nuisances, and that before becoming such they could be sent to rendering establishments in the neighborhood of the stock yards at a very small cost compared to the fees allowed the public contractor under the ordinance. While declaring this ordinance unconstitutional in so far as it had the effect

arbitrarily to take the dead carcass from one person and to give it to another, the opinion does not overlook the fact that such dead carcasses may soon become nuisances in a populous city, and clearly recognizes the right of the municipality, under the police power, to "prescribe the manner and the time in which the owner shall remove or permit them to be removed." In denying the petition for rehearing (46 S. W. Rep., 701) the court declared it to be legal and proper for the municipality to do just what the city and county of San Francisco has done in order No. 2965, using the following words:

> "We may add that the general council may provide by ordinance that in the event the owner of a carcass of a dead animal fails to remove it within the prescribed time, or pay such reasonable fees as may be fixed for its removal, it shall become the property of the city, or of such person as may be authorized by contract with the city, to remove it; or it may be provided that upon the failure of the owner to remove it within the prescribed time, it shall become the property of the city or of such person as may be authorized to remove it."

Meyer v. Jones, 20 Ky. Law Rep., 1632; 49 S. W. Rep., 309, lays down the same rule. After quoting with approval the words given above from the second opinion in the Knauer case, the court says (p. 810):

> "The city can by ordinance compel the owner of a dead animal to remove it within a certain time, and prescribe the manner in which it shall be conveyed over the streets of the city. If the owner fails to do it within the time prescribed in the ordinance, then the city can employ such method or instrumentalities as it pleases for the removal, and fix the compensation to be paid therefor."

In this case the ordinance was declared invalid, not because excessive fees were fixed for the removal of animals, as in the Knauer case, but because it did "not give the owner

of a dead animal the right to remove or have it removed within a prescribed time before the public contractor "should take charge of it. Surely, the ordinance would not have been declared invalid if, like the San Francisco order, it had given the owner of the dead animal six hours within which to remove the carcass.

For a similar reason, the facts in *River Rendering Co. v. Bahr*, 77 Mo., 91; 46 Am. Rep., 6, clearly distinguish that case from the one now before this court. The answer therein alleged that the defendants had not purchased, removed, or interfered with such animals as had died in the city of St. Louis and been abandoned by the owners, but only such as had been shipped by railroads and boats into the Union stock yards and had not been abandoned, but were claimed and possessed by their owners, and that they had immediately removed them to their factory in Illinois before there could be any possibility of their becoming nuisances in such city. The ordinance which they were accused of violating prescribed no time limit, but, as construed by the two courts which had passed upon it, transferred "the property of A in his dead hog or bullock to B, without the intervention of courts or juries and with no formality whatever, except a notice from the police department of the city that the hog or bullock is dead, and is to be found at a given place, which may be on the owner's premises in his own possession." The court properly held that the death of a domestic animal does not terminate the owner's property, and while he may be required to make such use or disposition of the carcass as will prevent a nuisance, stench, or other inconvenience to the neighborhood, the municipal authorities cannot arbitrarily deprive him of his property by giving it to another. In this and in many similar cases the oft-quoted sentence in *Underwood v. Green*, 42 N. Y., 140, appears: "A dead hog is not *per se* a nuisance, even though it died of suffocation, and is not necessarily dangerous to public health." But with the equally well established addition, "while a dead animal is not *per se* a nuisance

it may become so, and the city, under her charter, may pass such ordinances as are necessary to prevent it from becoming a nuisance, but she must in such legislation pay a proper regard to the rights of the owner of such property."

The same principles are clearly expressed in *State v. Morris*, 47 La. Ann., 1660, 1664; 18 So. Rep., 710, and the rights of a city plainly defined and limited. The court says:

> "The city might, as a sanitary measure, after having given the owner the opportunity to dispose of his dead animals, authorize a contractor to cart them away and appropriate them to his own use. In warm climates the police of cities requires regulations that should be enforced with great vigilance to prevent nuisances injurious to health. The necessity of such ordinances would not justify the council in declaring that all dead animals found in the city, not killed for human food, are nuisances *immediately after death*. This is the effect of the ordinance.
>
> "We rest the case entirely on the ground that the owner is entitled to reasonable time after the death of the animal to dispose of it, or cart it away under the requirements of existing ordinances. The situation and the climate may render it necessary to permit very little time and opportunity for removal. In adopting ordinances which necessarily must be general, the owner may be allowed but little time, if public safety requires, for the removal of his dead animals. * * * The laws do not justify an absolute denial of all the owner's rights from the moment of death without the possibility of its becoming a nuisance before a disposition can be made in the owner's interest. The city, invested with power, claimed by the plaintiff as plenary, in regard to health and cleanliness can, under proper police regulation, permit the owner, during a brief period of time, to realize any value his dead animal may have, and at the same time carry out a scheme ample in every respect to protect public health and secure required cleanliness."

Would any court hold that in a city like San Francisco six hours' time is too brief a period to allow an owner within which to remove his dead animal?

In *State v. Morris* the court expressly says that it passes "upon the legality of an ordinance only in so far as relates to the removal of dead animals," and the attitude which it would take regarding an enactment similar to order No. 2965 of the city and county of San Francisco is clear from its ruling in *State v. Paysan*, 47 La. Ann., 1029; 17 So. Rep., 481.

Here an ordinance relative to garbage was upheld, notwithstanding the attacks similar to those urged in the case now before this court, that it was arbitrary, unreasonable, and oppressive. The court says (p. 1030):

> "With reference to the unreasonableness of the ordinance and the oppression charged, we deem it in place, preliminarily, to state that the legislature delegated the authority to the municipality to adopt needful regulations for the protection of health and to maintain cleanliness. It is true that the word 'garbage' is not used in the charter, but the equivalent is therein expressed. The council is authorized to adopt ordinances for the frequent inspection of buildings and premises, and to compel cleanliness. *This necessarily includes the authority to have garbage moved away and destroyed that is annoying to health.* The general power regarding health and cleanliness having been given, we are of the opinion that the ordinance cannot be impeached as invalid on the ground of unreasonableness." Citing numerous cases.

The court further expresses the opinion that "without reference to express power in the charter a municipal corporation does not legislate unreasonably by adopting ordinances to protect the community against the offensive and unwholesome smell of decaying vegetable and animal substances, and that such ordinances are consonant with the purpose of such incorporation and consistent with the laws."

This case also makes a fine answer to another objection urged against order No. 2965, which will be quoted at this point, though other cases will be cited in support of the same position later in this brief. The court says (p. 1031):

> "As to the grounds of the defendant that the ordinance creates a monopoly, that it divests vested rights, we think it sufficient answer to say: On this appeal we can only decide that garbage which may cause discomfort, and which is injurious to health, can be *removed* and *destroyed* under an ordinance adopted under a legislative grant of power, and that this ordinance may be adopted without creating a monopoly or divesting one of vested rights. * * *
>
> "We do not perceive that there is reason to complain of an ordinance authorizing the *removal of garbage by contract.* The city government has the power of deciding in what manner a nuisance shall be removed. In having the work done by a contractor, employed in the manner required by law, they have not exceeded the discretion with which they are vested in such matters. Such contracts are frequent, and when fairly entered into, *give no rise to legal objection.* The issues here do not justify an inference that a privilege has been granted unauthorized and reprobated by law."

In *Schoen v. City of Atlanta*, 97 Ga., 697; 25 S. E. Rep., 380, the ordinance prescribed three hours as the time within which the dead animal should be removed by the owner, but provided further that even within such time he should "remove or cause to be removed such carcass *to the place designated by the board of inspectors*, and it was upon this latter provision that the case turned. In deciding against the validity of the ordinance, the court says (p. 701):

> "A dead animal is not necessarily a nuisance, and until it does become one, due regard must be had to the property rights of the owner; but since it must necessarily become a nuisance of a very offensive and dangerous character unless some disposition is promtly made of it which will prevent its becoming

so, the municipal authorities need not wait until it has actually reached that stage before undertaking to deal with it as a nuisance. They may by ordinance prescribe that where the animal dies or is found dead within the corporate limits, it shall not be allowed to remain there beyond a specified reasonable time, and that the owner shall within that time remove it, or cause it to be removed, beyond such limits, and to a specified reasonable distance, and that unless he does so, the carcass shall be taken charge of by the agents of the corporation, and dealt with as a nuisance *per se*. We do not think, however, that they have a right to prescribe that, after the owner or his agent has removed the carcass beyond the corporate limits within the time allowed, it shall be deposited at such place only as shall be designated by the municipal authorities. When the owner has, within the prescribed time, removed it to a distance sufficiently remote to prevent its becoming in any way a nuisance to persons residing within the corporate limits, we think the municipal authorities have no further concern with it."

The conviction in this case was declared illegal because "it appeared that the animal was removed within the time prescribed by the ordinance, and to a place several miles beyond the city, where, so far as appeared, it was in nowise offensive, or a source of danger to persons in the city."

A careful examination, then, of the cases cited and so much emphasized by the petitioners in their brief for the writ of certiorari not only shows that the facts upon which they were founded are entirely different from those in the case now before this court, but also discloses principles upon which, so far as they are applicable, the validity of the San Francisco orders can be fully sustained. One other recent case not cited in the brief in behalf of petitioners, that of *Campbell v. District of Columbia* (1901), 19 App. Cas. (D. C.), 131, involves similar principles, and may be appropriately considered here. In that case the public garbage contractor was given the right, under one clause inserted in his con-

tract, "to collect daily, including Sundays, for a period of five years, beginning December 1, 1900, from every part of the District of Columbia all dead animals, and remove them to convenient hauling distance as may be approved by the Commissioners of the District." It will be observed that no time limit was prescribed for the owner, and by the agreed statement of facts in the case the carcass sought to be removed had not become a nuisance or injurious to health or offensive to the senses of sight or smell. Judge Shepard opens his opinion with the words (p. 137):

> "There can be no more important field for the exercise of the activity of the ordinary police powers of government than the preservation of the public health, and it is within the unquestioned power of the municipal authorities to enact regulations looking to the *speedy and innocuous removal of the carcasses of all animals that may die within the limits of their jurisdiction, the decomposition of which would not only endanger the public health but also create a serious nuisance of another kind.*"

The court held this power to be not unlimited, however, and decided that the conviction of the defendant was improper, saying (p. 140):

> "The owner of an animal dying within the city limits, is entitled to a reasonable opportunity to exercise his unextinguished right of property in the carcass, and a police regulation which denies it to him is without foundation. Under conditions that may prevail or dangers that may be apprehended, the time allowed may be very brief, but some reasonable time under all the circumstances must be accorded."

After the decision of this case the owner of any dead animal was given *four* hours within which to remove it by the District authorities, where the death occurred on private premises, and only *one* hour where death occurred else-

where. (See section 9 of the Regulations of the Commissioners, quoted in *Dupont v. District of Columbia*, 20 App. Cas. (D. C.), 477.) Though these time limits are considerably shorter than that prescribed in the San Francisco order No. 2965, they have never been claimed to be unreasonable.

In concluding the opinion in the *Campbell* case the court uses words which, as we shall soon see, have an important bearing upon the case now before this court (p. 140):

> "Most if not all of the cases cited in behalf of the defendant in error, arise out of *regulations and exclusive contracts for the disposition of garbage, and present conditions that do not appear in the case at bar. It may well be that from the nature of garbage, a different rule would apply;* but that phase of the question is not involved and we express no opinion upon it."

That phase of the question, as we shall hereafter find, was soon to come before the court, and in one of the best opinions of the many which uphold ordinances similar to the San Francisco orders an authoritative opinion upon it was expressed.

> *Dupont v. District of Columbia*, 20 App. Cas. (D. C.), 477.

Two important cases decided in the United States circuit court for the northern district of California uphold the constitutionality of proper "dead-animal contracts" and clearly state principles which sustain the validity of the orders of the board of supervisors of San Francisco upon which the Sanitary Reduction Works relies in this case, viz:

> *Alpers v. City and County of San Francisco*, 32 Fed. Rep., 503.
>
> *National Fertilizer Co. v. Lambert*, 48 Fed. Rep., 458.

In the *Alpers* case Mr. Justice Field, in enjoining any obstructions to the execution of the contract therein relied on, said (p. 505):

"There is no doubt that the contract between the plaintiff and the city and county of San Francisco is one within the competency of the municipality to make. It is within the power of all such bodies to provide for the health of their inhabitants by causing the removal from their limits of all dead animals not slain for human food, which otherwise would soon decay, and, by corrupting the air, engender disease. And provisions for such removal may be made by contract, as well as the performance of any other duty touching the health and comfort of the city, its authorities always preserving such control over the matter as to secure an observance of proper sanitary regulations."

The *Lambert* case throws light on the meaning of the words contained in both order No. 2965 and order No. 12 (second series), "and any dead animals, not otherwise provided for by contract or franchise heretofore granted," for the complainant in that case had been given, under an order passed by the board of supervisors of San Francisco on December 26, 1882, "the exclusive right and privilege" *for a period of twenty years*, "of removing from the city limits all carcasses of such dead animals not slain for human food, as shall not be removed and so disposed of as not in any manner to become a nuisance, within twelve hours next after the death of the same by the owner thereof" etc. It will be noticed that this contract had not expired when the orders here called in question were passed, nor when this suit was brought, though section 6 of order No. 2965 provides that, in case such contract should be forfeited by the parties holding it, the grantees under said order should immediately succeed to the rights so forfeited. In upholding the exclusive privilege claimed by complainant, Judge Hawley, who also wrote the opinion in the circuit court of appeals in the present case, said, in answer to the contention that the contract attempted to create a monopoly, and deprived persons of their property without due process of law (p. 461):

"It is the duty of every government, whether State or municipal, to pass laws or ordinances for preserving the public health, protecting the good order and peace of society and providing for the abatement of nuisances. Such laws, if they contain nothing more than the necessary restrictions and limitations for the accomplishment of such purposes, are not unconstitutional on the ground that they deprive persons of their property without due process of law. Quarantine regulations, for instance, materially interfere with the free and unobstructed use of private property, and for the time being restrain, to a certain extent, the liberty of individuals. Yet the health, safety and welfare of the community often demand their enforcement; and such laws have always been upheld as necessary police regulations. Several other instances might be cited where laws of a similar character are sustained, but the authorities are too numerous and the general principles of law too well settled, to require any extended reference or review. No person has an inalienable right to produce disease, or trade in that which is noxious, and in every community, large or small, some minor rights of individuals must be surrendered for the benefit, protection, health and general good of all."

Having thus examined the so-called dead-animal cases and demonstrated that the principles underlying all those decisions are in no respect violated by the San Francisco orders, we desire now to call particular attention to the following cases relating to garbage contracts and ordinances, which certainly indicate a remarkable unanimity of opinion on the main questions now before this court:

Walker v. Jameson, 140 Ind., 591; 37 N. E. Rep., 402; 28 L. R. A., 679; 49 Am. St. Rep., 222.

City of Grand Rapids v. De Vries, 123 Mich., 570; 82 N. W. Rep., 269.

Dupont v. District of Columbia, 20 App. Cas. (D. C.), 477.

People v. Gardner (Mich.), 100 N. W. Rep., 126.

State v. Orr, 68 Conn., 101, 110; 35 Atl. Rep., 770; 34 L. R. A., 279.
Ex parte Casinello, 62 Cal., 538.
Kilvington v. City of Superior, 83 Wis., 222, 226; 53 N. W. Rep., 487; 18 L. R. A., 45.

In the first of these cases Jameson was the holder by assignment of a contract with the city of Indianapolis, through its board of public works, under which he had the exclusive right and obligation to remove the garbage from the premises of all persons in said city, and to transport the same through the streets thereof to the crematory. The contract had been let to the lowest bidder. The contractor was given the right to collect the price fixed for removal from the householder who produced the garbage. The contract was first assailed on the ground that the provision for payment by the householder was an "assessment" against him or his property, but the court said that such provision had not for many reasons a single element of an assessment. The opinion continues (p. 595):

"No householder is required to have garbage removed or pay for its removal. Every householder may destroy all his garbage on his own premises, taking care not to create a nuisance in so doing. If he do not destroy all, he may reduce it to a minimum. This ordinance and contract simply provide that if he does produce garbage that has to be carted through the streets, the city or its agent, the contractor, shall do the work at his expense. * * * It is no more an assessment than is the provision of the ordinance fixing the rate of payment for gas or water, or street car fare, as authorized by section 59 of the city charter, or the numerous provisions of section 23, specifying that the common council may require things done by the parties, and, if not so done, have the city do them at their expense, as taking down dangerous buildings, removing snow from the walks, etc."

Proceeding to treat the question, the court lays down the broad principle that "it is within the general power of a government to preserve and promote the public welfare, even at the expense of private rights," and that "in the exercise of the police power the State is ordinarily to be governed only by considerations of the public welfare." And says (p. 598):

> "It resolves itself solely into a question of power, and not of mere reasonableness. We recognize the rule that a municipal corporation has no power to treat a thing as a nuisance which cannot be one, but it is equally well settled that it has the power to treat as a nuisance a thing that from its character, location and surroundings, may, or does become such. In doubtful cases where a thing may or may not be a nuisance, depending upon a variety of circumstances requiring judgment and discretion on the part of the town authorities in exercising their legislative functions under a general delegation of power like the one we are considering, their action, under such circumstances, would be conclusive of the question."

Beach on Public Corporations, vol. 2, sec. 995, is quoted to the effect that "a by-law of a city prohibiting any person not duly licensed by its authorities from removing the house dirt and offal from the city is not in restraint of trade, but reasonable and valid, on the ground that, in the interests of public health, a city is justified in providing for some general system for removing offensive substances from the streets by persons engaged by the city, and responsible for the work, at such times as they are directed to attend to it," and in *Dillon on Municipal Corporations* (sec. 369) similar regulations are declared valid. Many authorities are cited which hold that it is reasonable "to grant to one or more the exclusive right to remove the carcasses of dead animals and other offal of a city (*Vandine, petitioner*, 6 Pick., 187; 17 Am. Dec., 351; *Cooley's Constitutional Limitations*, 6th edition, 739;

Tiedeman's Police Power, 316; *Dillon Municipal Corporations*, secs. 141 & 142)."

The court sums up the entire matter in the sentence near the close of the opinion (p. 602):

> "In view of the great weight of authorities, we are of the opinion that the contract and ordinance assailed are both within the long-settled and clearly recognized lines of police power, which is as broad as the power of taxation, and being simply a sanitary regulation, they cannot be considered as in the nature of confiscation or an attempt to create a monopoly."

In *City of Grand Rapids v. De Vries* the defendant was convicted of violating an ordinance regulating the disposition of garbage. Grand Rapids owned its garbage crematory, of which its board of health had the management and control. Under the ordinance the board of health was authorized "to enter into a contract with any suitable person or persons for the purpose of furnishing proper vessels or tanks for the reception of garbage, offal and all other refuse matter, and for furnishing the necessary vehicles for collecting and removing the same in the manner directed by said board." The person with whom the board should make the contract was to receive a license, and the ordinance further provided that no license should "be issued to any other person, firm or corporation for the gathering of such garbage." The holder of the license received no compensation from the city, but had the right to make a charge for his services of not more than ten cents a week to each householder, or one dollar a week to each hotel, restaurant, or boarding-house. This exclusive right was given for a period of three years, with a provision for an extension of two years more. The defendant had been in the habit of gathering garbage for twelve years, and the evidence in this case showed that the garbage he collected did not have a bad

odor, and that it was taken home by him and fed to his hogs. He had applied for a license and been refused.

The court quoted the definition of the words "garbage" and "offal" contained in the ordinance as including "every refuse accumulation of animal, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetables," and said that "these matters, in and of themselves, are regarded as nuisances—that is, the ordinary and accepted meaning of the words "garbage" and "offal" is such refuse matters that in and of themselves are nuisances." The ordinance was "aimed only at refuse—that is, discarded worthless matter—matter unfit for food. The householder has perfect liberty, under the ordinance, to consume or to sell or give away all the leavings of his table or kitchen that are fit for food, but he is not supposed by the ordinance to have around his premises in open baskets, pans, pails, or heaps that which is known as "refuse." Matter of this character he is required to care for by depositing the same in water-tight vessels or tanks, and dispose of it in such a way that will not endanger the public health." The court held the ordinance to be reasonable and valid. The orders of the board of supervisors of the city and county of San Francisco relate to the same kind of discarded, worthless refuse matter and substances as the ordinance of Grand Rapids—"house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, broken glass, crockery, tins, bones, rubbish, or other like matter, or any dead animals (not otherwise provided for by contract or franchise heretofore granted by the city and county), or putrid or stinking animal or vegetable matter, or fish, flesh, and food condemned by the board of health as unfit for human food." That such refuse substances as these are in and of themselves nuisances, and that such only are aimed at and included is evident, not only from the words taken as a whole and in their context, but from the fact that these substances are not to be

"dumped or deposited," but are to be delivered at the crematory of the sanitary reduction works, to "be cremated or destroyed or subjected to such disposition and treatment as will secure and effect a complete combustion of all gases and odors arising therefrom."

Perhaps the most instructive case of all, and the closest in its facts to the one now before this court, is *Dupont v. District of Columbia*, 20 App. Cas. (D. C.), 477. Under the District appropriation act of Congress of June 6, 1900 (31 Stats., 822, 830), the Commissioners were authorized to enter into a contract for the collection and disposition of garbage, miscellaneous refuse, ashes, and dead animals, under such regulations and specifications as they might establish, for a period not exceeding five years. Under this authority, the Commissioners thereafter entered into a contract with the Washington Fertilizer Company, which company, thereupon erected the necessary plant for the disposition of the collected garbage, its location and construction being approved by the Commissioners. Elaborate regulations were adopted by the Commissioners, some of which are here copied on account of their similarity to the provisions of the San Francisco orders:

> "SECTION 8. It shall be unlawful for any person to deposit, throw or place any garbage, dead animal, fish or refuse animal or vegetable matter on any avenue, alley, street or other public place in the District of Columbia, or into the Potomac river, or in any other waters in the said District."

In section 9 it is provided that the District contractor shall collect and remove "all garbage, dead animals, fish, and refuse animal and vegetable matter found within the District to some place to be designated or approved by the Commissioners of the District, and to dispose of the same through a reduction or consumption process, subject to the sanitary inspection and approval of said Commissioners," and further that "no other person or party, except the District contractor, his, their or its agents, shall carry, convey or

transport through the streets, alleys, or public places of the said District any garbage, dead animals, fish, or refuse animal or vegetable matter, and it shall be unlawful for any person to interefere in any manner with the collection and disposal of such materials or dead animals by the District contractor, his, their or its agents or employés." Then follows the proviso and exception above alluded to as to the removal by the owners of dead animals of the carcasses within a limited period of not exceeding four hours after death. Stringent provision appears at the close, that "all garbage, dead animals, night soil, miscellaneous refuse, and ashes must be within the digesting tanks, or within the furnace, or otherwise in process of actual disposal not later than six o'clock a. m. on the day following their receipt by the contractor," and that all garbage and other refuse must be completely reduced within 48 hours.

When arrested the defendant Dupont was hauling through the streets of Washington several cans of garbage which he had collected under a contract from the Riggs and National hotels, intending to take it to his farm in Maryland, and to feed part of it to his hogs, and use part in fertilizing his land. The cans in which his garbage was conveyed conformed to the regulations prescribed by the commissioners. It was admitted that the garbage was worth $5 to the defendant. Notwithstanding his claim that the regulations above quoted were arbitrary and unreasonable, and that their effect was to deprive him of his property without just compensation or due process of law, he was convicted and fined.

In upholding the conviction, Judge Shepard says:—

> "The plaintiff in error does not, of course, deny that the reasonable regulation of the disposition of daily accumulating garbage and miscellaneous refuse matter in the District is a subject within the police power of Congress, the execution of which it may delegate to the municipal authorities in general terms."

After a clear and exhaustive treatment of the principles involved in the case, in the course of which it is stated, among other things, that money value is not alone sufficient to remove the materials purchased "from the category of nuisances and settle their character as property", or "make a case of unreasonableness or oppression against the law and the regulations under consideration," the opinion concludes (p. 488):

> "For these reasons it is apparent that no hard and fast rule can be laid down for the government of all cases arising out of the frequent exercise of the police power. Each case must turn upon its own peculiar circumstances and conditions, and it is only when these clearly show that the regulations and restrictions imposed have no substantial relation to objects within the police power and therefore constitute a palpable invasion of private rights that the courts are justified in denying their obligations. In *Campbell v. District of Columbia, supra*, we were of the opinion that the regulation, as applied to the facts of that case, was of such character.
>
> "The distinction between the two cases is clear. The carcass was valuable, had undergone no decay whatever, and was promptly removed in a wagon of approved construction. The death of a horse is of comparatively infrequent occurrence, and not capable of producing constant, widespread apprehension of danger or discomfort.
>
> "Garbage, as we have seen, is necessarily composed largely of matter noisome even before its deposit in the receptacles provided for it, and other matter mingled with it must necessary partake of its offensive character. Moreover, it is a thing of almost hourly accumulation in every occupied house of a large city, and is therefore a constant menace to the health and comfort of thousands of people. These conditions amply justify the application of a different rule as regards its collection, removal and final disposition.
>
> "In reaching the conclusion that the regulation under the facts of this case is a valid exercise of the police power, we are not to be understood as holding

that all matter which may be laid aside, merely, in the preparation of dishes for the table is necessarily garbage, and therefore subject to the same regulation in all respects. We agree with the supreme court of Connecticut in the case before cited (State *v.* Orr) that there may be some things, as for example, meat trimmings, fruit and vegetable parings, and the like, that are capable of unobjectionable uses. These the owner could not be compelled to throw away, but might make any reasonable use of before they could become offensive. *But when such matter is mingled with garbage, it becomes likewise subject to public control, notwithstanding that in some instances, the owners might be able to dispose of it for a price to persons willing to handle and make use of it, in its unreduced state, as either animal food or manure.*"

No better statement of the case now before this court could be made. Under the San Francisco orders, the substances to which they apply have already been discarded and have passed from the premises of the householders or other persons producing the same, into other hands, or to the public streets, and even if some things unobjectionable in themselves may have been mingled with them, such substances must be delivered at the crematory of the Sanitary Reduction Works, there to be cremated or destroyed.

People v. Gardner (Mich.), 100 N. W. Rep., 126, is an important recent case in point. The ordinance for the violation of which the defendant was convicted, required the occupants of dwellings, hotels, etc., to provide suitable water-tight boxes in which all garbage and refuse matter should be placed, and provided that the city might enter into a contract for the disposition of such garbage. Such contractor was required to remove all garbage in accordance with certain expressed regulations, and all other persons were prohibited from carrying or transporting any garbage through the streets. Garbage was defined so as to include dead animals and condemned food found within the city. The defendant contended that the refuse which he had gathered from the

tables of hotels had a money value as food for swine, and that in transporting it he was acting for the purchasers thereof, and asserted that the ordinance was not only unreasonable, but was unconstitutional as an attempt to take private property without compensation.

After stating that similar ordinances had been upheld in *People v. Gordon*, 81 Mich., 570, and *Grand Rapids v. De Vries, supra*, the court said (p. 127):

> "In those cases, the question of whether there is a property right in refuse was not raised in the form in which it is here presented, although in the case last cited it was quite plainly implied that the common council, *in the exercise of the police power, had the right to treat as a nuisance all such refuse as is unfit for human food. The court may well take judicial notice that table refuse, when dumped into receptacles kept for that purpose, will speedily ferment, and emit noisome odors calculated to affect the public health. If, in providing against such a nuisance, the owner of such material suffers some slight loss, the inconvenience or loss is presumed to be compensated in the common benefit secured by regulation*" (Horr and Burns, Municipal Corp., § 220).

The Michigan court fully approved the *Dupont* case, saying that Judge Shepard "distinguished some of the cases cited by defendant's counsel, which hold that it is not competent to declare a dead animal to be a nuisance *immediately after death*, and adding that "the reasoning in Dupont's case commends itself to us, and we are disposed to follow it. Judgment affirmed."

State v. Orr, 68 Conn., 101, is another interesting case, but space will not permit an extended consideration. Attention is called to the provision of the ordinance that no deposit should be made "within the limits of the city of Bridgeport, or upon any wharf, or upon any vessel lying at any wharf, except by permit from the board of health," which closely resembles in one important particular the San Francisco

orders. The court held that the board of health might contract with a single person to collect and remove garbage from the entire city.

In this case the defendant claimed that the garbage was fresh, and that no evidence was given that any of it was sour or putrid, and therefore asked the trial court to instruct the jury that "the privilege of contracting to transport garbage is a liberty and property right, of which one cannot be deprived without due process of law, unless the jury find that such garbage at the time of its transportation is a nuisance and detrimental to health." But it was held that such instructions were properly refused, the court saying (p. 112):

> "It was a violation of the ordinance to collect and transport the kitchen refuse which was its subject, whether such of it as was being transported at the time of the act complained of was noxious or innoxious. It was enough that it was 'such refuse matter as accumulates in the preparation of food for the table.' There is so much of this kind of matter that is offensive and dangerous to the health of the community, that all may be properly made the subject of public supervision and control."

In *Ex parte Casinello*, 62 Cal., 538, the following order of the board of supervisors of the city and county of San Francisco, closely resembling a provision of the orders now called in question, was upheld by the supreme court of California:

> "No person shall throw into, or deposit upon any public street, highway or grounds, or upon any private premises, or anywhere, except in such a place as may be designated for that purpose by the superintendent of public streets and highways, *any glass, broken ware, dirt, rubbish, garbage or filth.*"

After quoting section 11 of article XI of the California constitution and the provisions of the act of the California legislature approved April 25, 1863, already given in full in this brief, and remarking that it is too plain to admit of con-

troversy that dirt, rubbish, garbage, and filth are nuisances, and that glass and broken ware can be easily converted into nuisances if thrown about promiscuously, the court concludes (p. 542):

> "The regulation in this case, instead of being arbitrary, unreasonable or unjust, was a wise and salutary one, calculated to promote the welfare and best interests of the city, and was in its nature and purpose, a salutary police regulation, designed to protect the safety and health of the inhabitants of the city of San Francisco."

The general question took a different phase in *Kilvington v. City of Superior*, 83 Wis., 222—whether a contract made by the city for the erection of a garbage crematory at a designated place was valid. The court held the contract binding on the city, saying that it was not at all necessary "that there should have been express power conferred on the village to build, or contract for building, the crematory. The village board might contract for it as a means adapted to the end of preventing or abating nuisances, and as a health measure, and so within the general purpose for which the village was organized."

The rights of the village are thus stated (p. 225):

> "It would hardly be questioned by any one that, if garbage, manure, or dead animals were found within the village, in the interest of good order, cleanliness and public health the board of trustees would have power to abate such nuisances by removing or otherwise making suitable disposition of them. *To this end it might provide for destroying them* instead of fouling the waters of a lake or stream of water with them, to be again cast up, to the prejudice of the public, or *depositing them where they would create a new nuisance.* To this end, if a garbage crematory becomes necessary, the board may within a fair and *bona fide* exercise of their discretion, contract for its construction, and the village will be bound by the contract."

While in no one of the foregoing cases which have been considered were the facts exactly like those connected with the San Francisco orders now before this court, every question affecting the validity of these orders has been somewhere raised and after careful consideration decided in their favor. We have, moreover, found no case which holds any order similar to them invalid. To make this conclusion entirely plain and indisputable, we will very briefly, by way of final summary, answer the various objections which have been or can be urged against the orders.

A.

The orders are not invalid because they confer an exclusive privilege or right.

In *Slaughter House Cases*, 16 Wall., 36, Mr. Justice Miller said (p. 66):

> "It may be safely affirmed that the Parliament of Great Britain, representing the people in their legislative functions, and the legislative bodies of this country, have from time immemorial to the present day continued to grant to persons and corporations exclusive privileges,—privileges denied to other citizens,—privileges which come within any just definition of the word monopoly, as much as those now under consideration; and that the power to do this has never been questioned or denied. Nor can it be truthfully denied that some of the most useful and beneficial enterprises set on foot for the general good have been made successful by means of these exclusive rights, and could only have been conducted to success in that way."

The changing of a very few words in two sentences in the opinion of Mr. Justice Miller shows how that great decision is entirely applicable to the case now before this court. The sentences are (p. 61):

"That the landing of live stock in large droves, from steamboats on the bank of a river, and from railroad trains, should, for the safety and comfort of the people, and the care of the animals, be limited to proper places, and those not numerous, it needs no argument to prove. Nor can it be injurious to the general community that while the duty of making ample preparation for this is imposed upon a few men, or upon a corporation, they should, to enable them to do it successfully, have the exclusive right of providing such landing places, and receiving a fair compensation for the services."

Making the slight changes, we have:

"That the garbage and other refuse substances daily accumulated and collected in a large city, should for the safety and the comfort of the people, and the protection of the public health, not be dumped or deposited at will by those producing or collecting the same, but should be cremated or otherwise destroyed at some proper places, and those not numerous, it needs no argument to prove. Nor can it be injurious to the general community that, while the duty of making ample preparation for this is imposed upon a few men, or a corporation, they should, to enable them to do it successfully, have the exclusive right of providing such crematories or places of reduction, and receiving a fair compensation for the same."

Upon the Sanitary Reduction Works was imposed the duty of making preparation for cremating and otherwise destroying the accumulated garbage, and the necessity of expending in that behalf upwards of $180,000. The exclusive right of providing the crematories and the privilege of charging a fair compensation for cremating the garbage were therefore entirely just, and were necessary to enable that corporation to do the work successfully.

Exclusive garbage contracts were upheld in the following cases already commented upon at length:

City of Grand Rapids v. De Vries, 123 Mich., 570.
Walker v. Jameson, 140 Ind., 591.
Dupont v. District of Columbia, 20 App. Cas. (D. C.), 477.
Smiley v. McDonald, 42 Neb., 5.
Coombs v. McDonald, 43 Neb., 632.
People v. Gardner (Mich.), 100 N. W. Rep., 126.
State v. Payssan, 47 La. Ann., 1079.

Many passages from the above cases on this point have already been quoted, as well as one from *Iler v. Bass*, 64 Neb., 710.

And exclusive dead-animal contracts have been upheld in the following cases:

Alpers v. City and County of San Francisco, 12 [illegible] Rep., 503.
National Fertilizer Co. v. Lambert, 43 Fed. Rep., 431.
City of Louisville v. Wible, 84 Ky., 293.

In *State v. Orr*, 68 Conn., 101, 110, the court held that the board of health "might contract with a single person to collect and remove garbage from the entire city, or with several persons to collect and remove it from as many different portions of the city. It might also make such contracts with respect to parts of the city, or to certain buildings in parts of the city, and lease the collection and removal of garbage from other places open to those who obtain from its clerk a proper permit, and provided proper means of transportation. *By neither method of procedure would any monopoly be created by which the common right of citizenship would be infringed upon.*"

See also *Vandine, petitioner*, 6 Pick., 187.

In *City of Louisville v. Wible, supra*, the court said (p. 295):

> "The State, however, *and its municipalities*, entrusted with the execution of this power, may provide the means of protecting the public health. It is its duty to do so, and any means may be adopted that will effect the end, such as employing competent and trusty persons to take the matter in charge, under the supervision and control of the State or city."

In *Bancroft v. Thayer*, 5 Sawy., 502, 505, Fed. Cas. No. 835, it was even held that a State may provide by legislation that a designated person should have the exclusive privilege of furnishing all the text books needed for use in the public schools, the court saying:

> "To authorize or provide that by means of contract or legislative grant, a particular person * * * *shall have the exclusive right to do or furnish a particular thing upon certain conditions for the use or convenience of the public, has always been a common mode of exercising the police power of the State.*"

This principle has been repeatedly affirmed in the decisions upholding what are known as the uniform text-book laws.

Dickinson v. Cunningham (1904, Ala.), 37 So. Rep., 345.
Lupes v. State (1899), 103 Tenn., 500; 53 S. W. Rep., 962; 48 L. R. A., 167 (citing numerous cases).
Cooley's Constitutional Limitations (5th ed.), 225, note 1.

These cases have been decided under constitutions with very stringent provisions against monopolies and show that such exclusive privileges granted under the police power of the State or the city are not monopolies within the meaning of such prohibition nor of the law.

B.

The orders are not invalid as taking private property without compensation.

In the brief presented on the application for the writ of certiorari a few words of the bill of complaint filed by the Sanitary Reduction Works in the circuit court were italicized, to the effect that portions of all of the garbage "are of value as articles of commerce," but the words immediately following were left in plain, ordinary letters, being "*after being treated and reduced by your orator by processes both of reduction and incineration.*" There is no admission in this sentence that refuse materials had such value at the time they were cast off and gathered by the scavengers. Moreover, the evidence shows that the works had only been used as a crematory; that they had not been equipped with machinery for reducing the garbage, and that the company had obtained no by-products whatever from the garbage (Rec., p. 112). That the company has the right to construct machinery in order to reduce the garbage and derive profit from these by-products whenever it deems it wise to do so, cannot be questioned, but to gain this profit it will be required to incur considerable additional outlay and expense.

With this passing allusion to a part of petitioner's brief which might lead to a misunderstanding of the facts in this case we cite, without further comment, the following cases which hold that such orders as those now under consideration do not violate any property rights of the citizen:

People v. Gardner (Mich.), 100 N. W., 126.

Dupont v. District of Columbia, 40 App. Cas. (D. C.), 477.

National Fertilizer Co. v. Lambert, 48 Fed., 458.

State v. Orr, 68 Conn., 101.

Harrington v. City of Providence, 20 R. I., 235.

Baker v. Brown, 12 Pick., 183, 193.

And also the following celebrated cases in this court:

Lawton v. Steele, 152 U. S., 133, 136.
Mugler v. Kansas, 123 U. S., 623, 661.
Powell v. Pennsylvania, 127 U. S., 678, 685.
Barbier v. Connolly, 113 U. S., 27.

In *Mugler v. Kansas*, *supra*, at page 669, this court says:

> "The power which the States have of prohibiting such use by individuals of their property as will be prejudicial to the health, the morals or the safety of the public is not,—and consistently with the existence and safety of organized society cannot be,—burdened with the condition that the State must compensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted, by a noxious use of their property to inflict injury upon the community. The exercise of the police power *by the destruction of property which is itself a public nuisance*, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner."

In *Chicago, Burlington & Quincy R. R. Co. v. Chicago*, 166 U. S., 226, 255, this court said that the city could not be required "to compensate the defendant for obeying lawful regulations for the safety of the lives and property of the people," prescribed under the police power vested in it.

In the brief for petitioners some reference is made to certain articles mentioned in the San Francisco orders—for example, ashes and bones—as possessing value and not being nuisances *per se*. While the testimony in the circuit court was to the effect that the Sanitary Reduction Works did not insist on ashes being brought to the crematory (Rec., p. 116), yet, without regard to this fact, these articles are mingled with the discarded garbage and refuse substances which

are collected from the San Francisco householders, and under the decisions, already many times alluded to, of *State v. Orr* and *Dupont v. District of Columbia*, "they likewise become subject to public control." Many of the ordinances include ashes in the list of refuse matter (see, for example, the Jameson and Dupont cases), and it will be time enough to declare the orders inapplicable to substances which may be shown not to be nuisances in themselves, or likely to become such, when some person is improperly arrested for violating them. No such case has been made by petitioners in the matter now before this court.

C.

The orders do not in any respect interfere with the occupation of scavengers.

As Judge Hawley said in his opinion in the circuit court of appeals, 126 Fed. Rep., at page 40, in showing that the case of *Iler v. Ross*, *supra*, does not apply to these orders:

> "As a matter of fact, the scavengers in this case are not enjoined from entering upon private property and removing filth and garbage therefrom. The object sought to be accomplished in this suit is to enjoin appellants from diverting from the crematory of appellee in the city and county of San Francisco the garbage, waste and refuse within the city, *which the scavengers collect in the prosecution of their business. This does not deprive them of the right to collect the garbage, but does prevent them from interfering with the right given by the city to dispose of it in any other way than by dumping or delivering it at appellee's crematory.*"

Even if the company holding the exclusive contract to dispose of the garbage had also the sole right to collect it, the orders would not be invalid. We have seen that in a large number of the garbage cases already referred to it

length the contract included the collection of the garbage from the premises of the householders, hotels, etc. In *City of Grand Rapids v. De Vries*, 123 Mich., 570, the court said (p. 583):

> "The respondent asserts that the ordinance does not license or control, but prohibits, what he denominates a lawful and proper business. The business of handling and carting garbage through the public streets of a city is a business which a municipality may regulate for the benefit of the public health. * * * It is not the creation of a monopoly when the city from year to year licenses one or more persons to cart such garbage from and out of the city, specifying the manner in which it shall be done."

Citing to the same effect *Rendering Co. v. Behr*, 7 Mo. App., 345, the court also says (p. 582):

> "The gathering of garbage is not a trade, business or occupation in any proper sense, and such employment does not come under the doctrine in reference to monopolies or in reference to legislation in restraint of trade. It is a matter in which the public agencies are authorized to pursue the best means to protect the public health."

D.

The charge authorized to be made upon those delivering the garbage does not make the orders invalid.

It was claimed that a few of the scavengers enjoined by the circuit court were householders. This really is of no consequence. Such charges are not illegal and have frequently been upheld. The charges sustained in the Slaughter House cases, *supra*, rest on exactly the same principles. Mr. Justice Miller pointed out the only objection which can be properly made to them in the sentence, "The prices or charges to be made by the com-

pany are limited by the statute, *and we are not advised that they are on the whole exorbitant or unjust.*" It may be noted that the charge which the rival company, one of the petitioners for the writ in this case, was entitled to make under its contract was only two cents less per load than the charge authorized by the orders, though such company had not, at great expense, erected a crematory, nor did it intend to destroy the garbage. In the Grand Rapids case, section 5 of the ordinance contained the following:

> "Provided, however, that patrons so furnishing garbage as aforesaid shall not be subjected to a weekly charge of more than ten cents for each household, and not more than one dollar a week for each hotel, restaurant or boarding-house."

In *Raymond v. Fish*, 51 Conn., 80, 96; 50 Am. Rep., 3, the person who placed the filth was to pay for its removal, if he was known; otherwise, the town. In *King v. Davenport*, 98 Ill., 305; 38 Am. Rep., 89, an ordinance was upheld which provided that if the city caused the removal of a condemned building within the fire limits the expense of the removal might be recovered from the offender.

In *Waller v. Jameson*, 140 Ind., 591, the provision for payment by the householder was expressly upheld, and the fact that upon a petition for rehearing it was said that the right of appellee in that case to recover "did not depend upon the liability of the citizen to pay for the removal of his garbage" does not in any way weaken the strength of the arguments in the main opinion. In the case now before this court, as in the Jameson one, no refusal of a householder to pay the charge is asserted, and it may with equal propriety be said that it will be time enough to consider such a question "when it arises," as the Indiana opinion on rehearing puts it, "between the respondent company" and the citizen in an action to recover for the "cremation" of such garbage.

The right to make a reasonable charge was also upheld

in *Meyer v. Jones*, 20 Ky. Law Rep., 1632; 49 S. W. Rep., 809 (passage quoted *supra*).

See also, on this point, *Smiley v. McDonald*, 42 Neb., 5, and *Dupont v. District of Columbia*, 20 App. Cas. (D. C.), 477, and *People v. Gardner* (Mich.), 100 N. W. Rep., 126, the ordinances considered in all of these cases having provided for such charges.

These charges are precisely similar in principle to the inspection fees which are so common. In *Willis v. Standard Oil Co.*, 50 Minn., 290; 52 N. W. Rep., 652, the fees for inspecting illuminating oils were attacked, but the court upheld them, saying (p. 297):

> "It is also objected that the act is one levying a tax, and not a police regulation. * * * That the State may make any business requiring police regulation pay the expense of regulating and controlling it, and that this may be done by exacting fees, license fees, or inspection fees, *from those engaged in the business*, no one disputes. On its face, this law is a *bona fide* police regulation, a proper inspection law, and the fees are in good faith exacted to reimburse the State in the expense of inspection and forcing observance of the law."

What real difference in principle is there between such a case and the case of a public contractor or agent whom the State or municipality has employed and authorized to put up an expensive building and plant, and then to make a reasonable charge upon those who produce or deliver the garbage for the creation and destruction of the same?

See, also—

City of Norfolk v. Flynn (1903), 101 Va., 473; 44 S. E. Rep., 717; 99 Am. St. Rep., 918.

Morgan's Steamship Co. v. Board of Health of Louisiana, 118 U. S., 455.

E.

The term of fifty years was within the discretion of the municipality to grant.

On this point the learned judge who wrote the opinion in the circuit court of appeals well says (126 Fed. Rep., at page 38; Rec., p. 418):

> "The question as to the reasonableness of granting the exclusive franchise for fifty years is one upon which there may be honest differences of opinion. Courts cannot, in the determination of this question, run a race of opinion upon points of reason and expediency with the law-making power. No iron-clad rule can be laid down to determine where the discretion of the board ceases, and where the power and authority of the court to declare the action of the board unreasonable begins. The border line must be ascertained by the facts, conditions and circumstances surrounding the subject-matter in every particular case. The board in the present case exercised its best judgment in passing order No. 2965 and included therein such terms and conditions as it deemed necessary for the protection of the public health, safety and welfare. It was authorized by the laws of the State to make the contract in question. It was required to act with sound discretion as to the methods and terms. With the honest and reasonable exercise of this authority, a court has no right to interfere, although the board may not have chosen the best method or made the most advantageous contract in relation to the subject-matter. It is only in cases where it clearly appears that the board has exceeded its authority, or acted arbitrarily, oppressively and unjustly in the exercise of its discretion, that a court is called upon to act. When we take into consideration, as we must, the large expense to be incurred by appellee in the building of its crematory, and the protection and benefit to be derived by the city and its inhabitants, we are unwilling to say that the term of fifty years for the life

> of the contract is so unreasonable as to authorize, warrant or justify us, in the light of all the authorities and of all the facts, to declare the order void."

In the *Slaughter House Cases* the duration of the privilege granted was twenty-five years, in the *Alpers* case twenty years, in *Smiley v. McDonald* ten years, and in the *Dupont* case five years, in all these cases the privilege being an exclusive one. In this connection attention is called to the fact that the grantee under order No. 2965 not only paid a cash sum of $2,510 for this franchise, but also agreed to pay to the city and county of San Francisco 2 per cent. of the gross receipts for the first fifteen years and 5 per cent. for the remaining thirty-five years, and also bore the entire expense of the construction of the crematory. The city of Grand Rapids built and owned its own crematory. As Judge Hawley says, there is certainly nothing disclosed by the evidence in this case which will authorize a court to declare the orders void because of the term of the franchise or privilege conferred by it.

F.

A municipality has the same right to exercise the police power in matters within its jurisdiction as the State.

On page 14 of the brief presented by the petitioners for the writ of certiorari it is said of the *Slaughter House Cases*:

> "The law-making power in that case was the sovereign law-making authority of the State of Louisiana, while here we have a mere municipal corporation which has only such authority as is delegated to it by a sovereign law-making power."

It is needless to say that no such distinction can be made to apply to the case now before this court. We quoted at

the very beginning of our discussion the provisions of the constitution of California and the law of 1863 which confer ample power on the city and county of San Francisco to pass the orders now under consideration. In this matter of health there is, therefore, no difference between the powers of the State and the municipality. Mr. Justice Miller claims the two together near the beginning of his opinion in the *Slaughter House Cases:*

> "It is not, and cannot be successfully controverted that it is both the right and the duty of the legislative body, *the supreme power of the State or municipality*, to prescribe" etc.

In *City of Louisville v. Wible*, 84 Ky., 290, 295, it is said that "the State and its municipalities entrusted with the execution of this power may provide the means of protecting the public health." Besides, nearly every one of the numerous garbage and other cases which we have so carefully considered were concerned with the ordinances of municipalities.

See also, besides these:

Barbier v. Connolly, 113 U. S., 27.
Yick Wo v. Hopkins, 118 U. S., 370.
Ex parte Lacey, 108 Cal., 326.
Ex parte Tuttle, 91 Cal., 589.
Ex parte Schraeder, 33 Cal., 279, 284.

It may then be safely asserted that the legislative body of the city and county of San Francisco—that is, its board of supervisors—had the right under its police power to make all the provisions for the protection of the public health which the State of California or any sovereign State could make, and the same rules will determine the validity of the orders herein called in question as would be applied to the legislative acts of a State. Tested in this way, the validity of the orders numbered 2965 and 12 (second series) cannot be doubted.

MUNICIPAL QUESTIONS.

Certain questions were raised and argued in the brief filed by petitioners in support of their application for the writ of certiorari, which, in the light of the principles regulating the exercise of the police power by the legislative body of a municipality, as clearly explained in the cases which have been already considered at length, do not seem of sufficient importance to merit extended notice. We feel confident that the case now before this court will be decided here on the same broad grounds as in the lower courts. We shall, therefore, devote only a brief space to pointing out the weakness of these arguments as urged against the San Francisco orders.

In the first place, it is evident that, even if possessed of strength, these objections could not be made at this time or in this action. Thompson on Corporations, section 5340, declares:

> "But on the other hand, when a party other than the State, seeks to establish rights against a corporation, and it defends against the action on the ground of its being possessed of certain franchises with which the action is compatible, it is sufficient that it appears that it is *in fact in possession of the franchises claimed. Whether or not it is rightfully in possession of them is a question which can only be determined in a proceeding in which some person or corporation who claims a better title is a party*" (citing *Weaverville, etc., R. Co. v. Supervisors*, 64 Cal., 69, 71).

The case of *City of Zanesville v. Zanesville Gaslight Co.*, 47 Ohio, 1, from which the entirely misleading syllabus is quoted in petitioners' brief, has not the remotest bearing on the matter now before this court.

While the San Francisco board of supervisors assumed to act under the California act of March 23, 1893 (Statutes of Cal. 1893, page 288), it was not necessary for them to do so.

Even if that act had never been enacted by the California legislature, the board of supervisors might, with perfect propriety and entire legality, have proceeded under the police power vested in them to call for bids in the same manner as they advertised. It was their duty to make every effort to obtain an advantageous offer for the city and to make as good a contract as possible.

Still, considered as a franchise or privilege granted under the act of 1893, the right to cremate the garbage would be valid. It is true that in *Thompson v. Board of Supervisors*, 111 Cal., 553, as a result of a direct action in mandamus by one of the rival bidders for an electric railroad franchise the supreme court of California held that the law of 1893 compelled the award to the highest cash bidder. The petitioners are, however, as we have already seen, in no position to avail themselves of this objection. The defeated bidder, Merle, did contest the validity of the award to Sharon, to whose rights the Sanitary Reduction Works succeeded, but Merle was defeated (Rec., pp. 367, 368), and he did not appeal. In any event, it is evident that the city was the gainer by the acceptance of the Sharon bid, since in three years of the term of the franchise the 2 per cent. of the gross receipts makes up the cash difference between the two bids (Rec., pp. 114, 332). The California Reduction Company, one of the petitioners herein, organized in the fall of 1898 (more than two years after order No. 2965 was passed), certainly had no rights in the matter of the granting of this privilege. The Sharon privilege was adjudged valid in a suit in which the City and County of San Francisco was a party, and said city and county has been benefited by its yearly percentage of receipts ever since. It could not now assail the franchise if it would and would not if it could. Moreover, it became so evident that the rule laid down in the Thompson case was an unwise one that the State legislature changed the law on March 13, 1897, and provided that all bids for a franchise "must be for the payment in lawful money of the

United States of a stated per cent. of the gross annual receipts" (Cal. Stats., 1897, p. 135).

Acting upon the contract contained in order No. 2965, and in accordance with its terms and conditions, the Sanitary Reduction Works erected its plant at an expense of $180,000. It is in no respect material at this time, nor was it at the time this action was commenced, whether order No. 2965 was presented to the mayor for his approval or not. The record is silent in regard to this fact. For aught that appears therein, the order may have been presented to the mayor and not have been acted upon by him for ten days. In any event, order No. 12 (second series), which recited that all the terms and conditions of the former order had been complied with by the Sanitary Reduction Works, and expressly ratified and confirmed it, was unanimously passed by the board of supervisors and approved by Mayor James D. Phelan. The board of supervisors accepted the percentage of gross receipts, as fixed by the order for fourteen months before the action was commenced in the circuit court, and would not now be permitted to deny the validity of either order. As pointed out above, the petitioners for the writ of certiorari had not expended a dollar, or taken any action whatever, until after the passage of the second order.

The contracts of a corporation, whether municipal or private, stand on the same footing with contracts of natural persons and depend on the same circumstances for their validity and effect.

Argenti v. San Francisco, 16 Cal., 255.
Chapman v. County of Douglas, 107 U. S., 318, 357.
Clark v. Washington, 12 Wheat., 40.

The contract contained in order No. 2965, or the privilege or franchise conferred under it, was thus expressly ratified and confirmed by order No. 12 (second series). The crematory of the Sanitary Reduction Works was accepted by the second

order, and the recital was made therein that the terms and conditions of order No. 2965 had been fully complied with.

See *McQuillin*, Municipal Ordinances, section 164; also *Shilo*, St. 165, Pa. St., 386; 30 Atl. Rep., 986, and authorities cited.

But there are the best of reasons and strongest of authorities for holding that it was unnecessary to present order No. 2965 to the mayor for his action. In a recent case, that of *Mayor, etc., of Jersey City v. Town of Harrison* (N. J. L.), 58 Atl. Rep., 100, it is said (p. 101):

> "It must be conceded that where the legislature has authorized a municipality to act or contract, and does not require this to be done by ordinance, the legislative body of the municipality may contract by a vote upon a motion, or by the passage of a resolution."

Under the act of April 25, 1863, power was given to the board of supervisors of the city and county of San Francisco "by regulations or order * * * second * * * to make all regulations which may be necessary or expedient for the preservation of the public health and the prevention of contagious diseases, to provide by regulation for the prevention and summary removal of all nuisances" (Cal. Stats. 1863, p. 540).

That there is a difference between order or regulation and ordinance is evident from the use of the words in this act. For example, in division "seventh" it is plainly by an order not requiring presentation to the mayor that the board is given power "to designate one of their number who shall, in the absence of the mayor or *during his inability from any cause*, perform the duties required by law of the mayor." This distinction is also recognized in *People v. Counts*, 89 Cal., 15, wherein, in answer to the claim that the board should have proceeded by ordinance and not by order, the court said (p. 22):

"Conceding that the county government act for some purposes requires an *ordinance*, whilst for other purposes only an order is required, it is only necessary, in answer to this objection, to say that for the purpose under consideration section 37 of the act (Stats. 1883, p. 311, c. 75) requires the board to do what it is thereby required to do 'by order.'"

See also *McQuillin*, Municipal Ordinances, sec. 6.

Kilvington v. City of Superior, 83 Wis., 222.

Napa v. Eastoby, 76 Cal., 222, 228.

People v. Linder, 107 Cal., 94.

Fairchild v. City of St. Paul, 46 Minn., 540.

It will be noticed that only a contract clearly within the police power of the city is made by order No. 2965. Order No. 12 (second series), containing also a penalty for the violation thereof, was presented to the mayor for his action.

If order No. 2965 is to be considered as granting a privilege or franchise under the law of 1893, heretofore mentioned, then no action of the mayor was required, as it is definitely provided therein that "on the day so stated, the board or other governing or legislative body herein mentioned, must meet in open session and read the tenders. The franchise or privilege must then be awarded to the highest bidder" (Stats. Cal. 1893, p. 288). Certainly no opportunity was therein given for presentation to the mayor.

See *People v. Board of Supervisors*, 122 Cal., 421.

Eisenhuth v. Ackerson, 105 Cal., 47, referred to by opposing counsel, was a case of the granting of an electric railway franchise which was vetoed by the mayor, but this case has no application to the one before the court, for the reason that it does not arise under the act of 1893.

The police power of a municipality rests in its legislative body (*Slaughter House Cases*, 16 Wall., 36). The "legislative authority" of the city and county of San Francisco is vested in the board of supervisors thereof.

Harrison v. Roberts (1904, Cal.), 78 Pac. Rep., 537, 540.

It was held in this recent case that proposals for amendments to the charter need not be concurred in by the mayor or presented to him for his approval. Before the adoption of the present city charter it was held in *McDonald v. Dodge*, 97 Cal., 112, 114, that the board of supervisors of San Francisco is the body which forms the legislative department of the government of the city, the court saying: "It is true that the mayor, by virtue of his right of veto in certain cases, has some of the law-making power of the municipality; but the charter of the city" [this was the consolidation act in existence at the time order No. 2965 was passed] "does not make him a part of the 'legislative department,' in the sense that no independent power is or can be given to the latter." In the leading case of *Jacobs v. Board of Supervisors*, 100 Cal., 122, it was held that the constitutional provision for the fixing of water rates by the board of supervisors, or other governing body of the city and county, did not require the ordinance fixing such rates to be presented to the mayor of San Francisco for his approval. In *Truman v. Board of Supervisors*, 110 Cal., 128, it was held that the Board of Supervisors had power to fix the rate of taxation and that the mayor had no veto of their action in that matter. (See also *Brooks v. Fisher*, 79 Cal., 173.) As Chief Justice Beatty well says in the Jacobs case, "The board of supervisors of San Francisco is the legislative body as to all subjects of legislation, with a few specified exceptions; and its acts do not generally require the approval of the mayor."

The claim made that the franchise relied on in this case never took effect because of the words "from and after the approval of this order," seems entirely frivolous in view of section 13 of the order, viz: "This order shall take effect and be in force on and from its passage." It was certainly passed by the board February 17, 1896.

It is perfectly clear, then, that if order No. 2965 was in terms a regulation and in effect, as we may properly claim, a contract, which the board of supervisors of the city and

county of San Francisco had the right to make under the police power, it was not necessary that the order should be presented to the mayor, as he is no part of the legislative body of the municipality.

If order No. 2965 constitutes a grant and sale of a franchise under the law of 1893, no provision is made in such law for any presentation to or approval by the mayor, and such presentation would be clearly incompatible with its terms or plan. And even if it could be held upon any possible theory that order No. 2965 was invalid because it does not affirmatively appear in the record that it was approved by the mayor, still the full compliance with its terms and conditions by the Sanitary Reduction Works, the subsequent acceptance of its plant by the city and county of San Francisco, under order No. 12 (second series), unanimously passed by the board of supervisors and approved by Mayor Phelan, ratifying and confirming, as such later order does, the terms and contract contained in the former and the payment by the company and the acceptance by the city and county of the specified percentage of gross receipts, make the contract by the city and county and the rights conferred under such orders beyond any question valid and binding.

In conclusion, we desire to call particular attention to the able opinions presented in this case in the circuit court and in the circuit court of appeals and covering all phases of the matters under consideration (94 Fed. Rep., 693, and 126 Fed. Rep., 29; Rec., pp. 88, 409). The judges of these courts were all familiar with the local and municipal questions involved, and their line of argument and reasoning is on this account peculiarly valuable. Above all, we desire again to emphasize the fact that the only essential question to be determined is whether the San Francisco orders numbered 2965 and 12 (second series) constituted a valid exercise of the police power vested in that municipality. We submit that the cases which we have cited and at length considered in this brief are unanimous in holding that orders and regulations

of such character are wise and salutary, reasonable and proper, legal and constitutional; that they are in fact necessary for the preservation of the public health and the protection of the public interests.

The decree of the circuit court of appeals should be affirmed.

C. L. TILDEN,
SHELDON G. KELLOGG,
ALDIS B. BROWNE,
ALEXANDER BRITTON,
Counsel for Respondent.

ADDENDA.

Since preparing the foregoing brief, counsel for respondent have noted two later decisions upon the main questions involved in this case—one rendered by the supreme judicial court of Maine on April 14, 1905, and the other by the supreme court of California on July 13, 1905, as follows:

State vs. Robb, 60 Atl. Rep., 874.
In re Zhizhuzza, 81 Pac. Rep., 955.

These decisions are in entire harmony with the various authorities cited and considered at length in the brief. In the first case one William F. Robb was charged with unlawfully going "about collecting certain house offal, consisting of animal and vegetable substances, the said Robb not being then and there duly authorized and appointed thereto according to law," nor the deputy of any person so authorized and appointed. The ordinance of the city of Portland, upheld in this case, provided that "all house offal, whether consisting of animal or vegetable substances, shall be deposited in convenient vessels, and be kept in some convenient place, to be taken away by such person or persons as shall be appointed by the sanitary committee for that purpose." All persons were required to deliver promptly to the person so appointed "the offal accumulated on their premises," and were subjected to a fine for neglecting "to provide suitable vessels for the deposit of house offal," or for hindering or delaying in any way "the person so appointed to receive it, in the performance of his duties." The ordinance further provided, under penalty of a fine, that "no person shall go about collecting any house offal, consisting of animal or vegetable substances, or carry the same through any of the streets, lanes or courts of the city, except the person appointed as aforesaid, or his deputy."

The party charged with violating this ordinance had removed from certain hotels in Portland, of which he was the proprietor, refuse food and discarded victuals, and had also purchased and collected from two other establishments in the same city swill, consisting of refuse from the table, including bread, meat, vegetables, and broken victuals, though none were in a decayed condition, and had carried such offal and swill to his home in South Portland, where he had used it all in feeding his hogs and hens. He removed these substances in covered barrels, under proper sanitary arrangements, and in a workmanlike manner. Mr. Robb paid $100 a year for the swill which he purchased and collected from the two establishments. He had no license to perform this work from the city of Portland, which had, on the contrary, through the appointment by its sanitary committee in conformity with the ordinance, a regularly authorized scavenger. The ordinance had been clearly violated, but it was claimed to be unconstitutional, in that it was in restraint of trade, created a monopoly, and constituted an unwarrantable interference with the rights of the owners of private property.

After citing many well-known cases to the effect that "reasonable municipal health regulations, under the authority of the State, are not void as taking private property without due process of law, or as a taking of private property without due compensation," and that the fact that house offal has some appreciable value "does not save it from police regulation, if it is already noxious, or is in such condition as to require prompt intervention to prevent its becoming noxious and dangerous to health," the court sums up the matter in the following paragraph (p. 879):

"Upon a review of all the authorities, we conclude that the rule most consonant with authority, as well as with reason, is that a city, in the exercise of the police power granted to it by the State, may, by reasonable ordinance, regulate the collection and disposal of substances within the city,

which are of such a condition and of such a character as to be nuisances *per se* and deleterious to the public health or comfort, or which are liable to become nuisances and noxious and deleterious, unless immediate care is taken to prevent their becoming so. *We think that a city may prevent conditions injurious to health, as well as abate them. It does not create an unlawful monopoly or unlawfully restrain trade to commit the business of collecting and disposing of such substances to one person, and to exclude all others from such business.*"

The California case, *In re Zhizhuzza*, 81 Pac. Rep., 955, presents some novel features, but was decided on the same broad principles of the police power, which have been uniformly held to be applicable to these matters. The petitioner was a scavenger in the city of Oakland, and was convicted of gathering and removing garbage in violation of an ordinance of that city. This ordinance provided that "the city of Oakland, its duly authorized agents, servants or employees, shall have the exclusive right to gather and collect garbage within said city, and it shall be unlawful for any person, firm or corporation, except as otherwise provided in this ordinance, to collect or gather garbage within said city." The terms "garbage," "waste matter," "ashes," and "night soil" were defined separately, and together include considerably more than is covered by the San Francisco orders which form the basis of the case now before this court. The ordinance further provided that "all garbage accumulated at any private dwelling house or residence shall be removed by the city of Oakland, its agents, servants or employees, at regular intervals * * * and must be taken to the city garbage crematory, or such other crematory as may be hereafter legally established in said city, and must forthwith be consumed and incinerated therein to an odorless ash, and the city of Oakland, its agents, servants or employees, shall remove all ashes and waste matter. For such services, the occupant, tenant or lessee of each house or flat shall pay" a specified sum "to the authorized agent or col-

lector of the city garbage crematory" for the garbage removed, although no charge is allowed for the removal of ashes and waste matter, except in excess of a certain designated amount. All these accumulations of garbage at any store, shop, business house, boarding-house, meat, vegetable, or fish stand, or other place not a private residence," must also be removed and burned in the city garbage crematory, but a different fee, estimated in another way, is fixed for such services from that authorized in the case of private residences.

After holding that the ordinance was fully authorized by section 11 of article XI of the State constitution, and that it was not unfair or discriminating or in violation of the constitutional provision respecting uniformity, the court expressly upholds the power of the city to exact a fee from householders for the removal of garbage, citing in support *Slaughter House cases*, 16 Wall., 36, and *Walker vs. Jameson*, 140 Ind., 591, and quoting with approval from Judge Hawley's opinion in the present case, delivered in the circuit court of appeals. (See *California Reduction Co. vs. Sanitary Reduction Works*, 126 Fed. Rep., 29.) In concluding its opinion, the supreme court of California says (p. 958):

"The removal and disposition of garbage, as well as the regulation of slaughter-houses in cities and towns, is peculiarly a subject of municipal control, as without proper regulation either might become an intolerable nuisance and dangerous to the health and lives of the citizens. * * * Ordinances and regulations enacted by such city in pursuance of its charter have the same force and effect within the limits of the city as laws passed by the legislature. They both spring from the same source,—the constitution enacted by the people in their sovereign capacity."

It will be noticed that in the Maine as well as in the California case the agent or appointee of the city was authorized to gather and collect the garbage on private premises and to remove it therefrom, while in the case now before this

court the orders refer only to garbage and other waste substances which have already been collected by others and removed to the public streets. The San Francisco orders relate to the disposition of the garbage alone, while the Portland and Oakland ordinances upheld in the above cases covered the collection of the garbage as well.

Respectfully submitted.

C. L. TILDEN,
SHELDON G. KELLOGG,
ALDIS B. BROWNE,
ALEXANDER BRITTON,
Counsel for Respondent.

APPENDIX "A."

(*Rec., p. 324.*)

ORDER No. 2965.

Granting to F. E. Sharon, his associates and assigns, the sole right and privilege to cremate garbage, house refuse, dead animals, and putrid vegetable matter, and material of a like character, as well as to dispose of the same by some process of reduction equally effective and unobjectionable, and to convert the same, or a portion thereof, into fertilizing matter and other substances, free of all cost or charge to said city and county, and making certain violations of this order misdemeanors.

Whereas the disposal of house refuse, butchers' offal, garbage, putrid or stinking animal or vegetable matter, refuse, ashes, or other like matter, by cremation, or by some process of chemical reduction, is the only effective means to dispose of the same to prevent the said matter and material from being deposited in or upon lots, lands and public streets situate in the city and county or in the waters of the bay, as heretofore, to the prejudice of the public health; and

Whereas under the provisions of an act of the legislature, entitled "An act providing for the sale of railroad and other franchises in municipalities, and relative to granting of franchises" (approved March 23, 1893), bids for a franchise were duly called for; and

Whereas F. E. Sharon was the highest and best bidder for the said franchise, as hereinafter recited, and all the forms and requirements of law necessary thereto being complied with; now, therefore,

The people of the city and county of San Francisco do ordain as follows:

In consideration of the sum of twenty-five hundred and ten dollars, the receipt of which is hereby acknowledged, and in consideration of the further payment of two per centum for the term of fifteen years from and after the date of this franchise, and the payment of five per centum for the re-

maining term of thirty-five years, on the gross amount of the receipts to be derived by the said F. E. Sharon, his associates or assigns, under this franchise, to be paid into the treasury of the city and county of San Francisco each and every year during the continuance of this franchise, the franchise hereinafter recited is hereby granted to F. E. Sharon, his associates and assigns.

SECTION 1. The sole and exclusive right and privilege is hereby conferred upon and granted to F. E. Sharon, his associates and assigns, for a term of fifty years from and after the approval of this order, to cremate and destroy within the city and county aforesaid, by crematories or by a process of reduction, house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, and any dead animals (not otherwise provided for by contract or franchise heretofore granted), and putrid vegetable matter, and fish, flesh and food condemned by the board of health of said city and county as unfit for human food, and the said grantees, their associates and assigns, shall have the right and privilege to charge and collect therefor not exceeding the sum of twenty cents per load, such load not to exceed a cubic yard, on the delivery of the above material or substances at the plant or works where the crematory or reduction plant is established.

SECTION 2. The grantees, their associate and assigns, shall within a period of twenty-four (24) months after the granting of this franchise, unless the time is extended therefor by this board, have fully erected and constructed and in operation a suitable building or buildings, and equip, fit up and install the same with the necessary crematories machinery, tools and appliances required to cremate and destroy by cremation, or by a process of reduction, all obnoxious germs and elements contained in house refuse, butchers' offal, garbage, refuse, dirt, ashes, sludge, crockery, tins, cinders, bones and other like matter, and any dead animal and putrid vegetable matter, and fish, flesh and food condemned by the board of health as unfit for human food, the works to be constructed to cremate or reduce at least three hundred tons per day of the materials specified in this section, and the capacity to be increased as required from time to time.

SECTION 3. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to remove through

the public streets from any houses, hotels, markets, hospitals, factories, restaurants, stores or any other like building or place in the city and county, any refuse, butchers' offal, garbage, dirt, ashes, cinders, sludge, crockery, tins, bones, or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food condemned by the board of health as unfit for human food, or dead animals whose removal is not otherwise provided for by contract or franchise heretofore granted, unless the same shall be removed through said public streets in closed vehicles and wagons constructed so as to conceal the contents from public view, and to effectually prevent any smell escaping therefrom, as well as to prevent the droppings of any portion of such material or substances on or upon the public streets, and which said vehicles and wagons shall be constructed in accordance with specifications approved by the board of health of said city and county.

SECTION 4. From and after the erection and construction of the buildings referred to in section 2 of this order it shall be unlawful for any person or corporation to dump or place upon any land within said city and county, or in any water or waterways within said city and county, any refuse, butchers' offal, garbage or other material mentioned in section 3 of this order, but such refuse, butchers' offal, garbage and other material shall be forthwith delivered to the crematory herein provided for, and there, at the expense of the person or corporation so conveying the same, be cremated or destroyed or subjected to such disposition and treatment as will at once secure and effect a complete combustion of all gases and odors arising therefrom.

SECTION 5. The said grantees, their associates and assigns, on receipt of any of the material or substances specified in this order, shall within twenty-four (24) hours thereafter cremate or reduce the same, or shall subject the same to such process as will secure the complete combustion of all gases or odors arising therefrom. The said grantees, their associates and assigns, shall maintain and operate their plant and crematory or crematories, or other apparatus, and the matter and substances received, so as to prevent any obnoxious smells or gases being emitted either from the deposits of such matter or substances on their premises or from the process of cremation or other treatment thereof, or from the residuum remaining after cremation or treatment as afore-

said; also, that in the operation of said works no smoke or soot shall be emitted so as to constitute a nuisance.

SECTION 6. The said grantees, their associates and assigns, shall from and after the first day of December, 1902, have the sole and exclusive right and privilege during the continuance of the remainder of the term of this franchise to remove and dispose of the carcasses of all dogs killed at the public pound, and all animals impounded and not redeemed by the owners thereof, and which are valueless and cannot be sold; also, to remove and dispose of the carcasses of all dead animals found upon the public streets, and the carcasses of all dead animals in said city and county not slain for human food, which shall not be removed and disposed of by the owners thereof so as not to become a nuisance within six hours after the death of the same; provided that in the event the parties now holding and exercising this privilege of removing the dead animals not slain for human food should hereafter fail or refuse to remove the dead animals and should forfeit their contract with said city and county, then immediately upon such forfeiture the right to remove said dead animals shall vest in the grantees herein, their associates and assigns under this order.

SECTION 7. This board will pass such orders as may be required from time to time to enable the said grantees, their associates and assigns, to enjoy and have the benefit of all the rights and privileges herein granted, and on the completion of the work will pass such other and additional orders as will enable the said grantees, their associates and assigns, to carry out the contemplated destruction of garbage, offal, house refuse and material mentioned in this order and the conversion of the substances herein named for fertilizing and other purposes, and for the segregation prior to delivery of garbage and offal from ashes and other refuse.

SECTION 8. The said grantees, their associates and assigns, shall at all times be subject to and conform to all health and sanitary regulations and requirements enacted and in force during the existence of this franchise. The said grantees, their associates and assigns shall receive no compensation whatever from the city and county for any service performed under the conditions of this order in disposing of the material and substances specified in this order.

SECTION 9. This franchise shall cease and determine upon the failure of the grantees, their associates and assigns, to

fully carry out and faithfully perform the obligations herein imposed, unless from unavoidable cause beyond the control or power of the grantees, their associates and assigns, by reason of any fire or other casualty, the operations and works shall be destroyed or temporarily suspended in their operation. The said grantees, their associates and assigns, in the event of an accident to or destruction of their works, shall, during the time such works cannot be operated, and until said works are repaired or reconstructed, and within such reasonable time as may be allowed and approved by this board, shall deodorize the material and substances specified in this order and dispose of the same as directed by this board, so as to prevent all noxious gases or odors escaping therefrom, until the said material or substances are cremated or utilized as provided by this order.

SECTION 10. All of the machinery and appliances used shall be of California manufacture, except such as are manufactured exclusively or patented in the Eastern States or abroad.

SECTION 11. The said grantees, their associates and assigns, shall, within a period of ten days from the date of the approval of this order, file with the clerk of this board their acceptance of its provisions and of this franchise.

SECTION 12. Any violation of the provisions of sections 3 and 4 of this order shall be, and are hereby, declared to be a misdemeanor, and punishable as such.

SECTION 13. This order shall take effect and be in force on and from its passage.

All orders or parts of orders in conflict with the provisions of this order are hereby repealed and made null and void.

And the clerk is hereby directed to advertise this order as required by law.

In board of supervisors, San Francisco, February 17, 1896.

Adopted by the following vote:

Ayes—Supervisors King, Scully, Hirsch, Dimond, Taylor, Morgenstern, Spreckles, Hobbs.

Noes—Supervisors Benjamin, Hughes, Dunker, Wagner.

JNO. A. RUSSELL, *Clerk.*

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

Office of the Board of Supervisors of the City and County of San Francisco.

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify:

That, as clerk of the said board of supervisors, I have charge and custody and am the legal keeper of all the minutes, records and archives of said board of supervisors.

I further certify that the annexed printed document is a full, true and correct copy of order No. 2965 of said board of supervisors, and that said order was passed by said board of supervisors on the 17th day of February, 1896, and was adopted by vote of the supervisors therein named as voting in the affirmative thereon, and which said order No. 2965 is of record and on file in my said office.

I further certify that at the date of the passage of said order, said board of supervisors consisted of the twelve supervisors whose names appear in said order No. 2965 as voting in the affirmative and negative thereon.

I further certify that said order was advertised under the direction of said board of supervisors as required by law.

In witness whereof, I have hereunto set my hand as clerk of said board of supervisors of the city and county of San Francisco, State of California, this 29th day of March, 1899.

JNO. A. RUSSELL,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

APPENDIX "B."

(*Rec., p.* 329.)

ORDER NO. 12 (SECOND SERIES).

Prohibiting the dumping of dirt, garbage, butchers' offal or putrid matter, etc., upon any lands in the city and county of San Francisco, or on the water front, or from any wharf or bulkhead in said city and county, and providing for the cremation and destruction of the same, and the duties of officers in relation thereto.

Whereas, from time to time during the last twenty years, the dumping of garbage, dirt, offal, horse refuse, stinking animals or vegetable matter, ashes, cinders, sludge, acids or like matter, to fill in lots and property and particularly in filling in water lots, became so objectionable and deleterious to the public health that various plans have been adopted to mitigate such nuisance; and

Whereas, while steps have been heretofore taken to abate such nuisance by covering the same over with sand it has become apparent that the lots so filled in have thrown off noxious gases, deleterious to the public health, and in case of the prevalence of any epidemic disease would become a fruitful source of danger to the sanitary well-being of our citizens; and

Whereas, the board of health from time to time has called attention to and condemned the disposition of such garbage and refuse matter in the filling of lots and have repeatedly urged the cremation of such substances to protect the public health; and

Whereas, in order to provide satisfactory means by which all such deleterious matter should be disposed of an exclusive franchise was, by order No. 2965 of this board, passed, February 17, 1896, sold by this city and county authorizing the cremation and destruction of such substances; and

Whereas, the Sanitary Reduction Works, the assignee and successor in interest of the grantee of such franchise, has

notified this board of the completion of their works and of their readiness to receive, cremate and destroy all of such substances in accordance with the terms and under the conditions of said franchise; now, therefore,

The people of the city and county of Francisco do ordain as follows:

SECTION 1. No person, company or corporation shall, on and after the 8th day of November, 1897, deposit, dump or cause to be dumped or deposited upon any street, lot or lands within said city and county, or in any water or waterways within said city and county, or from any wharf or bulkhead on the water front of said city and county, except as hereinafter provided, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinders, sludge, broken glass, crockery, tins, bones, rubbish or other like matter, or any dead animals (not otherwise provided for by contract or franchise heretofore granted by the city and county), or putrid or stinking animal or vegetable matter or fish, flesh and food condemned by the board of health as unfit for human food.

All such refuse, butchers' offal, garbage, ashes, cinders, sludge, acids or other like substances or matter hereinbefore enumerated shall be delivered at and to the crematory of the Sanitary Reduction Works on the block bounded by Rhode Island, Alameda, De Haro and Fifteenth streets, in said city and county, and there at the expense of the person, company or corporation so conveying the same, be cremated and destroyed or subjected to such disposition and treatment as will secure and effect a complete combustion of all gases and odors arising therefrom as provided in the franchise aforesaid.

(*Penalty—Duty of Chief of Police.*)

SECTION 2. Any person, company or corporation violating the provisions of this order shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding two hundred and fifty ($250) dollars, or by imprisonment for a term not exceeding one hundred days, or by both such fine and imprisonment; and it shall be the duty of the chief of police to take such steps and issue such orders to the members of the force under his com-

trol as shall insure the arrest and punishment of any and all persons violating the provisions of this order.

(Board of Health to Aid in Enforcement of Order.)

SECTION 3. It shall be and is hereby made the duty of the board of health to aid by all means in its power the enforcement of the provisions of this order.

SECTION 4. Order No. 2300 and all orders or parts of orders conflicting with the provisions of this order are hereby repealed.

In board of supervisors, San Francisco, November 1, 1897.

After having been published five successive days, according to law, taken up and passed by the following vote:

Ayes—Supervisors Haskins, Delaney, Sheehan, Dodge, Lackman, Rottani, Morton, Smith, Rivers.

Absent—Supervisors Devany, Britt, Clinton.

JNO. A. RUSSELL, *Clerk.*

Approved San Francisco, November 4, 1897.

JAS. D. PHELAN,
Mayor and ex Officio President of the Board of Supervisors.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

Office of the Board of Supervisors of the City and County of San Francisco.

I, John A. Russell, clerk of the board of supervisors of the city and county of San Francisco, State of California, do hereby certify:

That as clerk of the said board of supervisors I have charge and custody and am the legal keeper of all the minutes, records, and archives of said board of supervisors.

I further certify that the annexed printed document is a full, true, and correct copy of order No. 12 (second series) of said board of supervisors, and that said order was passed by said board of supervisors on the 1st day of November, 1897, and was adopted by vote of the supervisors therein named as voting in the affimative thereon, and which said order No. 12 (second series) is of record and on file in my said office.

I further certify that at the date of the passage of said order, said board of supervisors consisted of the twelve supervisors whose names appear in said order No. 12 (second series) as voting in the affirmative and negative thereon.

I further certify that said order was advertised under the direction of said board of supervisors as required by law.

I further certify that order No. 12 (second series), having been passed by said board of supervisors was duly presented to and approved by the mayor and became the president of the board of supervisors on the 4th day of November, 1897.

In witness whereof, I have hereunto set my hand as clerk of said board of supervisors of the city and county of San Francisco, State of California, this 27th day of March, [illegible].

JNO. A. RUSSELL,

Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

Supreme Court of the United States.

No. 25.—October Term, 1905.

The California Reduction Company et al., Appellants, vs. The Sanitary Reduction Works of San Francisco.	Upon writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[November 27th 1905.]

Mr. Justice Harlan delivered the opinion of the Court.

The Board of Supervisors of the city and county of San Francisco, by ordinance adopted February 17th 1896 and known as Order No. 2965, granted to F. E. Sharon, his associates and assigns, the sole and exclusive right and privilege, for a term of fifty years, to cremate and destroy within the city and county, by crematories or by a process of reduction, house offal, dirt, ashes, cinders, sludge, crockery, tins, bones and other like matter, dead animals (not provided for by contract or franchise thereto-fore granted), putrid vegetable matter, fish, flesh and food condemned by the Board of Health of the city and county as unfit for human food—the grantees, their associates and assigns, having the right to charge and collect therefor not exceeding the sum of twenty cents per load.

The grantees, their associates and assigns were required to have in operation, within two years after the granting of the above privilege or franchise, a suitable building or buildings, with necessary crematories, machinery, tools and appliances necessary to cremate and destroy by cremation, or by a process of reduction, all obnoxious germs and elements contained in house refuse, and other substances above mentioned—the works to be such as would suffice for the cremation or reduction of at least three hundred tons per day of such substances.

By the same ordinance it was made unlawful, after erection of such works, for any person or corporation to remove through the public streets from any houses, hotels, markets, hospitals, factories, restaurants, stores or other like building or place, in the city and county, any of the substances above specified, except in closed vehicles and wagons constructed so as to conceal the contents from public view, and to effectually prevent any smell escaping therefrom, as well as to prevent the dropping of any portion of such material or substances on the public streets—such vehicles and wagons to be constructed in accordance with specifications approved by the Board of Health of the city and county.

The ordinance also made it unlawful, after the buildings referred to had been constructed, for any person or corporation to dump or place upon any land, water, or waterways within the city and county, any such substances, and required that they should be forthwith delivered to the above crematory, "and there, at the expense of the person or corporation so conveying the same, be cremated or destroyed or subjected to such disposition and treatment as will at once secure and effect a complete combustion of all gases and odors arising therefrom."

The grantees, their associates and assigns, were required, within twenty-four hours after receiving any of the material or substances above specified, to "cremate or reduce the same, or shall subject the same to such process as will secure the complete combustion of all gases or odors arising therefrom," and to maintain and operate their plant and crematories, or other apparatus, "so as to prevent any obnoxious smells or gases being emitted either from the deposits of such matter or substances on their premises, or from the process of cremation or other treatment thereof, or from the residuum remaining after cremation or treatment as aforesaid; also, that in the operation of said works no smoke or soot shall be emitted so as to constitute a nuisance."

The ordinance further provided that the grantees, their associates and assigns, should, from and after December 1st 1902, have the sole and exclusive right and privilege, during the remainder of the term of their franchise, "to remove and dispose of all dogs killed at the public pound, and all animals impounded and not redeemed by the owners thereof, and which are valueless and cannot be sold; also, to remove and dispose of the carcasses of all dead animals in said city and county not slain for human food, which shall not be removed and disposed of by the owners thereof, so as not to become a nuisance, within six hours after the death of the same."

It was further provided that the grantees, their associates and assigns should be subject to all health and sanitary regulations in force during the existence of said franchises; and should receive no compensation whatever from the city and county for services performed by them in disposing of the specified material and substances.

For the privileges or franchise granted by this ordinance, Sharon and his associates paid the sum of twenty-five hundred and ten dollars in cash, and stipulated to pay for fifteen years two per centum, and for the remaining term of thirty-five years five per centum, of the gross amount of their receipts from the business.

The Sanitary Reduction Works, a corporation of California, became the assignee and successor in interest of the franchise or privileges granted to Sharon, his associates and assigns, and notified the Board of Supervisors of the completion of their works and of their readiness to receive, commence

and destroy all such substances as were specified in Order No. 2965. The cost of such works, the present plaintiff alleged, exceeded the sum of $300,000.

Thereupon the Board of Supervisors, on November 1st 1897, adopted Order No. 12, (Second Series,) which provided that no person, company or corporation should, on or after November 8th 1897, deposit, dump or cause to be dumped or deposited upon any street, lot, land, water or waterways within the city and county, or from any wharf or bulkhead on the water front of the city and county, any of the above substances or material, and that all such substances or matter should be delivered at and to the crematory of the Sanitary Reduction Works, "and there, at the expense of the person, company or corporation so conveying the same, be cremated and destroyed or subjected to such disposition and treatment as will secure and effect a complete combustion of all gases and odors arising therefrom." Any violation of that order was declared to be a misdemeanor, punishable by a fine of not exceeding two hundred and fifty dollars, or by imprisonment for a term not exceeding one hundred days, or by both such fine and imprisonment.

The present suit was brought by the Sanitary Reduction Company against the California Reduction Company, and about one hundred and fifty individuals.

The defendant corporation was organized under the laws of Colorado, at the instance of certain citizens of California, for the purpose, we may assume from the record, of removing, by boats and barges, large quantities of the material and substances specified in the orders of the Board of Supervisors from the city and county of San Francisco and depositing them on lands in the county of San Mateo and elsewhere than at the works of the Sanitary Reduction Company, thereby preventing the same from being delivered to and incinerated and destroyed by the latter company under its contract with the city and county of San Francisco.

The individual defendants are subjects of the Kingdom of Italy, and owners of licensed wagons used in their calling as scavengers in the city and county of San Francisco. It seems that a very few of them, not more than about a half dozen, are householders in that city and county.

Between the California Reduction Company and the individual defendants there is a written agreement, dated November 22d 1898, requiring the former, within thirty days thereafter, to provide one or more suitable buildings, wharves or other places, for the reception from the latter, "of all garbage, ashes, refuse, butchers' offal, dirt, sludge, crockery, tins or other like matter, or any putrid animal or vegetable matter, or any fish, flesh or food, or any dead animals; which said buildings, wharves or other place or places shall be so located that the average travel to the same

shall not exceed the average haul to the Sanitary Reduction Works by more than a quarter of a mile." By that agreement the individual defendants bound themselves to deliver at the buildings or places provided by the defendant corporation all such material or substances gathered by them from time to time in the city and county. The individual defendants also stipulated in the agreement that they would not deliver any of the above material or substances to any other party than the California Reduction Company, nor at any other place than the one designated and chosen by that company.

The pleadings and the evidence in the cause show that the defendants had entered upon the execution of their agreement and the transaction of the business to which it related. No question is made as to the right of the plaintiff to exercise whatever privileges had been legally granted to Sharon, his associates and assigns.

The object of the suit by the plaintiff corporation was to obtain a decree restraining the defendants, by injunction, from removing from the city and county of San Francisco, or depositing or dumping at any other place than at the works of the plaintiff, any of the garbage or other materials specified in the orders of the Board of Supervisors, or from infringing, directly or indirectly, the exclusive rights, privileges and franchises secured to the plaintiff as above stated.

The Circuit Court, Judge Morrow presiding, passed a decree giving the relief asked. 94 *Fed. Rep.* 693. That decree was affirmed in the Circuit Court of Appeals, Judge Hawley delivering the opinion of the court. 126 *Fed. Rep.* 38.

The defendants insist that the ordinances in question are invalid for the want of power in the Board of Supervisors to adopt them. This objection does not seem to be well taken. By the California Constitution of 1849 it was provided that "the Legislature shall have power to provide for the election of a Board of Supervisors in each county, and those supervisors shall jointly and individually perform such duties as may be prescribed by law." Subsequently, by an act approved April 25th 1863, it was provided that "the Board of Supervisors of the city and county of San Francisco shall have power, by regulation or order, . . . to authorize and direct the summary abatement of nuisances; to make all regulations which may be necessary or expedient for the preservation of the public health and the prevention of contagious diseases; to provide, by regulation, for the prevention of contagious diseases; to provide, by regulation, for the prevention and summary removal of all nuisances and obstructions in the streets, alleys, highways and public grounds of said city and county," etc. *Cal. Stat.* 1863, *p.* 540. Again, in

the State Constitution of 1879, it was provided that "any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." *Art.* 11, *sec.* 11. Further, by an act, approved March 23d 1893, it was provided, among other things, that every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate railroads along or upon any public street or highway, or "to exercise any other privilege whatever hereafter proposed to be granted by the Board of Supervisors, Common Council, or other governing or legislative body of any county, city and county, city, town or district shall be granted upon the conditions in this act provided, and not otherwise." One of those conditions was that the fact that such franchise or privilege had been made, together with a statement that it was proposed to grant the same, should be advertised—the franchise or privilege to be awarded to the highest bidder. *Cal. Stat.* 1893, *p.* 28.

It may be here observed that under the charter of San Francisco the Board of Supervisors for the city and county of San Francisco constituted the legislative department for that municipality. *McDonald* v. *Dodge*, 97 *Cal.* 112, 114; *Harrison* v. *Roberts*, 145 *Cal.* 173.

In the above constitutional and statutory provisions is found full authority for the Board to make and enforce, within the city and county of San Francisco, all such reasonable sanitary and other regulations as are not in conflict with any general statute or with the Constitution, and which have for their object the preservation of the public health, by whatever cause endangered. It was substantially so ruled in the Circuit Court of the United States, Northern District of California, in *Alpers* v. *City and County of San Francisco*, 32 *Fed. Rep.* 503, Mr. Justice Field delivering the opinion of the court. The ruling in that case was followed in *National Fertilizer Co.* v. *Lambert*, 48 *Fed. Rep.* 458. See also *The People* v. *Board of Supervisors of Contra Costa Co.*, 122 *Cal.* 421.

It is said that the grant to Sharon, his associates and assigns, was, in no sense, a franchise. It is true that the title of the act of 1893 refers only to franchises. But the body of the act shows that the Legislature intended to embrace privileges, exercised under public authority and not alone what may be, strictly, franchises. The [redacted] right granted to Sharon, his associates and assigns, was certainly a privilege, and the Board of Supervisors had power to grant it in order to protect the public health. But independently of the above statutes the Board had power, under the Constitution of the State, to make such sanitary regulations as were not inconsistent with the general laws, and that broad power carried with it the power, by contract and ordinance, to guard the public health in all reasonable ways.

The defendants criticise the ordinances because they give the exclusive privileges in question for a period of fifty years. But whether the period during which such privileges might be exercised, should be long or short, was a matter in the wise discretion of the Board and determinable wholly upon grounds of public policy. It may be that grants by public authority of privileges to be exercised for the benefit or in behalf of the public ought never to be for long periods. But it suffices to say that no such consideration can control the action of the judiciary.

The defendants insist that the ordinances in question are in violation of the Fourteenth Amendment of the Constitution, in that they deprive the householders of San Francisco of property of value, by transferring it to the Sanitary Reduction Works, without requiring compensation to be made; this, it is contended, being in violation of the Fourteenth Amendment. *Chicago, B. & Q. R. R. Co.* v. *Chicago*, 166 *U. S.* 526.

We do not perceive that the defendant corporation of Colorado and the individual defendants who are not householders are entitled to raise any such question. If householders do not complain but by silence assent to what the Board did, it is not for others to say that the property of householders is taken for public use without compensation; for householders, if so minded, may waive any right they have to compensation for their property destroyed to protect the public health. The individual defendants, in their answer, claim to be householders in San Francisco. But it seems that only about six of them are householders. The presence, however, of that number as defendants makes it appropriate, to consider the objection just stated upon its merits.

In determining the validity of the ordinances in question it may be taken as firmly established in the jurisprudence of this court that the States possess, because they have never surrendered, the power—and therefore municipal bodies, under legislative sanction, may exercise the power—to prescribe such regulations as may be reasonable, necessary and appropriate, for the protection of the public health and comfort; and that no person has an absolute right "to be at all times and in all circumstances wholly freed from restraint;" but "persons and property are subject to all kinds of restraints and burdens, in order to secure the general comfort, health, and general prosperity of the State"—the public, as represented by its constituted authorities, taking care always that no regulation, although adopted for those ends shall violate rights secured by the fundamental law nor interfere with the enjoyment of individual rights beyond the necessities of the case. Equally well settled is the principle that if a regulation, enacted by competent public authority avowedly for the protection of the public health, has a real, substantial relation to that object, the courts will not strike it down upon grounds merely of public policy or expediency. *Railroad Co.* v. *Husen*, 95 *U. S.* 465, 470–1; *Mugler* v. *Kansas*, 123 *U. S.* 623,

631; *Lawton* v. *Steele*, 152 *U. S.* 133, 136; *Atkin* v. *Kansas*, 191 *U. S.* 207, 223; *Jacobson* v. *Massachusetts*, 197 U. S. 1, 27. In the recent case of *Dobbins* v. *Los Angeles*, 195 *U. S.* 223, 235, this court said that "every intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health and safety, and that it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community."

The record abundantly discloses the grounds upon which the Board of Supervisors proceeded, in adopting the ordinances in question.

The Preamble to Order No. 2965 shows that, in the judgment of the Board, the only effective mode to dispose of house refuse, butchers' offal, garbage, putrid or offensive animal or vegetable matter, refuse, ashes or other like matter, and to prevent such substances from being deposited in or upon the lots, lands and public streets of the city and county, or in the waters of the bay, to the prejudice of the public health, was by cremation or by some process of chemical reduction. The conviction of the Board that decided action on the subject was imperatively demanded for the general good seems to have strengthened. For, Order No. 12, adopted a year later, stated in its Preamble that from time to time during previous years, the dumping of garbage, dirt, offal, house refuse, matter, ashes, cinders, sludge, acids or like matter, to fill in lots, and particularly in filling in water lots, had become so objectionable and deleterious to the public health that the attempt was made to mitigate such nuisances by covering them over with sand; that it had, however, become apparent that lots so filled and covered had thrown off noxious gases, deleterious to the public health, and when epidemic diseases were prevalent would become a fruitful source of danger to the sanitary wellbeing of citizens; and that the Board of Health had called attention to and condemned the disposing of garbage and refuse matter for the purpose of filling in lots. Such were the reasons which moved the Board of Supervisors to adopt that order making it unlawful to deposit any of such substances upon streets, lots or lands, or in any water or waterway, within the city and county, and requiring that they be delivered at the plaintiff's works, to be there cremated and destroyed or subjected to such disposition and treatment as would effect a complete combustion of all gases and odors arising therefrom.

We perceive no ground to doubt the good faith of the Board of Supervisors; nor can we say that the mode adopted for the suppression of the evils in question was arbitrary or did not have a real, substantial relation to the protection of the public health.

Many of the questions involved in municipal sanitation have proved to be difficult of solution. There is no mode of disposing of garbage and refuse

matter, as found in cities and dense populations, which is universally followed. In some cities garbage receptacles, properly covered, are provided, sometimes by the householder, sometimes by the municipal authorities or the garbage collector. But even such devices often prove to be worthless for want of proper attention to them by householders. Then, the question arises for the consideration of the municipal authorities as to the frequency of the removal of garbage. The practice is not at all uniform. In some cities, it is collected seven times a week; in others, six, four, and three times a week. Again, questions arise as to the mode in which garbage should be collected, and the statement is made by those who have investigated the subject, that while "there appears a well-nigh unanimous demand on the part of health officers and oftentimes of the public generally, for the municipal collection of garbage," the "problem of garbage disposal has not been solved." *Chapin's Municipal Sanitation in the United States, p.* 670. Similar observations might be made in reference to what is commonly called dry refuse, which, in many cities, includes ashes and all the rubbish accumulated in private houses, stores, market houses, and like places.

These references to the different methods employed to dispose of garbage and refuse have been made in order to show that the Board had before them a most difficult problem—unsolved by experience or science—as to the best or most appropriate method of protecting the public health in the matter of the disposal of the garbage, refuse and other materials found on private premises, and in hotels, restaurants and like places. The State, charged with the duty of safeguarding the health of its people, committed the subject to the wisdom and discretion of the Board of Supervisors. The conclusion it reached appears in the ordinances in question, and the courts must accept it, unless these ordinances are, in some essential particular, repugnant to the fundamental law. The general result which the Board of Supervisors sought to bring about was by cremation, or by such other treatment of the materials as would effect a complete combustion of all gases and odors arising therefrom. "Cremation," it is said, "is exclusively employed for getting rid of the garbage in England, and on the continent of Europe, and is rapidly coming into use in the United States"—the destruction by fire being theoretically "an ideal way, from a sanitary standpoint, for the disposal of garbage." *Chapin, p.* 714.

The defendants insist that the requirement that the substances mentioned should be delivered at the plaintiff's works for cremation or destruction, at the expense of the person, company or corporation conveying the same, was a taking of private property for public use without compensation. We cannot assent to this view. It is the duty, primarily, of a person on whose premises are garbage and refuse material to see to it, by proper diligence, that no nuisance arises therefrom which endangers the public

health. The householder may be compelled to submit even to an inspection of his premises, at his own expense, and forbidden to keep them or allow them to be kept in such condition as to create disease. He may, therefore, have been required, at his own expense, to make, from time to time, such disposition of obnoxious substances originating on premises occupied by him as would be necessary in order to guard the public health. If the householder himself removed them from his premises, it must have been at his own expense; and the scavenger who took to the crematory the material from the premises of origin, under some arrangement with the householder, was, in effect, the representative, in that matter, of the householder, and was performing a duty resting upon the householder. So, that if the requirement that the person conveying the material should pay a given price for having it cremated or destroyed, in effect, put some expense on the householder, that gave him no ground for complaint; for it was his duty to see to the removal of garbage and house refuse, having its origin on his premises. Still less has the licensed scavenger a right to complain; for his right to convey garbage and refuse through the public streets, in covered wagons, was derived from the public, and he was subject to such regulations as the constituted authorities, in their exercise of the police power, might adopt. The whole arrangement may be fairly regarded as one in the interest and for the convenience of the householder. He gets his proportionate benefit of any revenue derived by the city, and at the same time shares the protection given to him by the community. Nor did the destruction of garbage and refuse, at an approved crematory, amount, in itself, and under the circumstances disclosed, to a taking of private property for public use without compensation, even if some of the substances destroyed at the crematory had a value for certain purposes. The authorities were not bound, prior to the removal of such substances from the premises on which they were found, to separate those that were confessedly worthless from those which might be utilized. The garbage and refuse matter were all together, on the same premises, and as a whole or in the mass they constituted a nuisance which the public could abate or require to be abated, and to the continuance of which the community was not bound to submit. And when the obnoxious garbage and refuse was removed from the place of their origin and put in covered wagons to be carried away, the municipal authorities might well have doubted whether the substances that were *per se* dangerous or worthless would be separated from such as could be utilized and whether the former would be deposited by the scavenger at some place that would not endanger the public health. They might well have thought that the safety of the community could not be assured unless the entire mass of garbage and refuse, constituting the nuisance, from which the danger came, was carried to a crematory where

it could be promptly destroyed by fire; and thus minimise the danger to the public health.

Be all this as it may, the cremation and destruction of garbage and house refuse, under the authority of the municipal authorities, proceeding upon reasonable grounds, and at a place designated by law, as a means for the protection of the public health, cannot be properly regarded, within the meaning of the Constitution, as a taking of private property for public use, without compensation, simply because such garbage and house refuse may have had, at the time of its destruction, some element of value for certain purposes. With the knowledge of the householder the scavenger receives the garbage and refuse matter, that which, if separated, might have value being mingled with that which is, in itself, noxious and worthless. The entire mass goes into the same covered wagon, and the authorities are not bound, before its destruction at the crematory, to cause the good to be separated, from the bad, but could require, as the ordinance in question did, that the substances be promptly conveyed to the designated crematory and destroyed by fire. Such a disposition of the contents cannot be regarded as a taking of private property for public use without compensation.

This court has said that "the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not an unrestricted license to act according to one's own will." *Crowley* v. *Christenson*, 137 *U. S.* 86, 89. In *Mugler* v. *Kansas*, 123 *U. S.* 623, 664, it appeared that certain distillery property in Kansas was purchased, at a time when it was lawful in that State to manufacture and sell spirituous liquors, but which property, by reason of the subsequent prohibition of such manufacture and sale, had become of no value, or had materially diminished in value. The owner insisted that by the necessary operation of the prohibitory statute, his property was in whole or in part taken for public use without compensation. But this court said: "The power which the States have of prohibiting such use by individuals of their property as will be prejudicial to the health, the morals or the safety of the public, is not—and, consistently with the existence and safety of organized society, cannot be—burdened with the condition that the State must compensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community. The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the

one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner." In Sedgwick's Treatise on Statutory and Constitutional Law the author says that "the clause prohibiting the taking of private property without compensation is not intended as a limitation of those police powers which are necessary to the tranquility of any well-ordered community, nor of that general power over private property which is necessary for the orderly exercise of all governments. It has always been held that the legislature may make police regulations, although they may interfere with the full enjoyment of private property, and though no compensation is made." *pp.* 434–5.

Without further discussion, we hold, for the reasons stated, that the Circuit Court and Circuit Court of Appeals properly refused to adjudge that these ordinances were invalid.

Other questions have been discussed by counsel, but they do not require special notice at our hands. We are content with the disposition made of them in the courts below.

The decree of the Circuit Court of Appeals is

Affirmed.

Mr. Justice BREWER and Mr. Justice PECKHAM dissented.

True copy.

Test:

Clerk Supreme Court, U. S.